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# Political Science Quarterly

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Vol. 88 No. 4 December 1973

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The Academy of Political Science

Whither the American Party System?
JAMES L. SUNDQUIST

Separation of Powers and Executive Privilege: The Watergate Briefs
THE EDITORS

Post-Reconstruction Suffrage Restrictions in Tennessee: A New Look at the V.O. Key Thesis
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Reflections on Writing Biography of Public Men
LINDSAY ROGERS

Book Reviews

Title Page and Index to Volume 88

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# Political Science Quarterly

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Volume 88
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## *From the Managing Editor:*

*In this issue . . .*

JAMES SUNDQUIST offers his explanation of the shifts in the basic strength of the Democratic and Republican parties over the past 40 years. Looking ahead he anticipates not an inevitable disintegration of the party system, but a reversal of the current trend toward political independence and a rebirth and reinforcement of party loyalties along lines of cleavage resembling those of the New Deal era.

The EDITORS reprint the original legal briefs filed in the historic lawsuit to obtain for grand jury use the tape recordings of presidential conversations concerning the Watergate break-in. While President Nixon's attorneys argue in their brief that if disclosure of the tapes can be compelled by the courts "the damage to the institution of the Presidency will be severe and irreparable," the brief of the Special Watergate Prosecutor contends that "even the highest executive officials are subject to the rule of law" and "there is no exception for the President from the guiding principle that the public, in pursuit of justice, has a right to every man's evidence."

J. MORGAN KOUSSER analyzes suffrage restrictions enacted in post-Reconstruction Tennessee. Although the leading authority on southern politics, the late V.O. Key, Jr., suggested that in many states legal restrictions came after suppression of the black vote had become a *fait accompli* through violence and social pressure, the Tennessee example shows that the Key thesis may require modification.

ROBERT W. CLAWSON argues that the various Soviet leaderships from the revolution to the present have had little success in altering child-rearing practices in Russia through direct political programs. This is paradoxical given the prescriptions in Marxist doctrine for changing fundamentally the role of the family as a child-rearing unit and assigning to the state extensive responsibilities for shaping the attitudes of children.

STEPHEN E. KOSS surveys the crowded field of recently published British political biographies, illuminating major trends and evaluating the collective contribution of biographical writing to the study of history.

The late LINDSAY ROGERS, in a foreword prepared for his projected biography of Nicholas Murray Butler, reflects on the different styles that have been used and the problems encountered in writing biographies of public figures.

DEMETRIOS CARALEY

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# Whither the American Party System?

JAMES L. SUNDQUIST

The Republican mayor of New York City, John Lindsay, becomes a Democrat. Two ambitious young Republicans in the House of Representatives, Ogden Reid of New York and Donald Riegle of Michigan, do likewise. A former Democratic governor and prospective presidential candidate, John Connally, becomes a Republican. Another former Democratic governor, Mills Godwin of Virginia, leaves his party and accepts the Republican nomination for that same office. Meanwhile, two states of the once-solid Democratic South, Tennessee and Virginia, elect a majority of Republicans in their delegations to the House of Representatives. And four states of the former Republican heartland of the upper Midwest—South Dakota, Minnesota, Iowa, and Wisconsin—send to the Senate eight Democrats and not a single Republican.

What does it all mean?

Political scientists and journalists have been speculating for a decade that a major realignment of the American two-party system may be taking place. Every presidential election during that period

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has brought a spate of comment that this election might be the one —the long-awaited "critical election" of the kind that V.O. Key Jr. first wrote about, that results in a significant and durable shift in strength from one party to the other, that creates a wholly new structure of party competition. In 1964, a shift occurred in favor of the Democrats; would it prove transitory or lasting? In 1968 and 1972, the speculation ran the other way. Observers wondered if this was "the final breakup of the Roosevelt coalition" and the beginning of "a new cycle of Republican hegemony."

### *Aftershocks of the New Deal Earthquake*

In attempting to interpret the shifts of party strength in the past decade, the first question to be asked is whether those shifts record the rumblings of a new political earthquake or merely the aftershocks of an old one. And to answer that question requires an examination of what has happened to the party system during the whole of the forty-year period since the last great political upheaval, the realignment of the 1930s.

It was during Franklin Roosevelt's New Deal that the present party system came into being. In the 1930s, as in the 1890s and the 1850s, millions of voters made a permanent change of party identification; the country's previously normal Republican majority, established in the critical election of 1896, gave way to a new Democratic majority (or, perhaps more accurately, a strong plurality if independents are not allocated), which has proved equally lasting.

The rationale of the new party system was one of ideology. The overriding issue of the time, that precipitated the realignment, was whether the government should pursue an activist or conservative course in coping with the Great Depression—in relieving the destitute, reforming the economic system, and stimulating recovery. That issue was powerful enough, in its manifold aspects, to shatter the traditional party ties of millions of voters and impel them to re-identify according to how they felt on the question of governmental activism, as represented in the Roosevelt New Deal. Traditional Republicans, especially in the cities of the Northeast, became Democrats on that issue. A smaller number of traditional Democrats, largely in rural areas, became Republicans. The resulting party

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system, basically ideological, also had a class aspect because the lower-income strata of the population, as the potential beneficiaries of governmental intervention in the economy, were the ones that rallied in overwhelming numbers behind the philosophy of the New Deal.

But the distinguishing feature of the realignment of the 1930s was that it did not take place in a single critical election, or even two or three of them. In some communities, like Chicago and Pittsburgh, the pro-Democratic shift was abrupt and solid, and the realignment could be considered complete by 1936. But in others, the realignment set in motion in the critical presidential elections of the New Deal period was completed only later—sometimes much later.

People do not change parties readily. As Angus Campbell has written, "partisan identification is remarkably resistant to passing political events and typically remains constant through the life of the individual."[1] These identifications could be so firmly fixed that even the cataclysmic events of the Great Depression and the New Deal could not upset them. So the realignment of the New Deal period altered voting behavior in presidential elections more than it altered party identification—and it is the latter, of course, that one must consider in a study of the structure of the party system. Millions of northern Republicans who, according to the new rationale of ideology and class, should have become Democrats did not change parties; they simply deviated in their vote for president. They rejected Hoover and Landon in favor of Roosevelt but continued to support their party in state and local politics—attempting, though, to liberalize it. And in the South the reverse of that phenomenon took place. Conservative Democrats remained in their party despite their abhorrence of the New Deal and all it stood for, but they voted for Republican presidential candidates in increasing numbers, especially with the nomination of Dwight Eisenhower in 1952 and 1956.

The result was a persistent pattern of split-ticket voting—something new in American politics. In some of the states that Roosevelt carried, he polled several times the vote of his running mate for

[1] "Voters and Elections: Past and President," *Journal Of Politics*, 26 (1964), 747.

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governor (in 1936 in Wisconsin, 64 per cent against 22; in 1940 in Minnesota, 51 per cent against 11; in 1936 in North Dakota, 60 per cent against 30). That kind of divergence persisted in at least some degree for a long series of elections. It was not until the 1950s and even the 1960s that the Democratic party in many northern states finally succeeded in translating its presidential-level voting strength into equivalent strength in state and local voting and in party registration.

In the South, where one-party politics was even more deeply entrenched, split-ticket voting has persisted even longer. The region as a whole has become as Republican as the nation as a whole in presidential voting—more so in 1964 and 1972—but the Democrats are still dominant in most of the state capitols and county court houses.

Yet divergence between national and state-local political behavior is inherently unstable. A voter who identifies with one party nationally and another locally enters into such a contradiction with reluctance in the first place; once in it, he normally feels some degree of pressure to resolve it. He can resolve it, obviously, in either of two ways. He can return to his original loyalty at the national level, in which case he will have simply deviated for a time in his voting behavior. Or he can change his loyalty at the local level to accord with his new national identification, in which case he will have "realigned." Both kinds of resolution, of course, occurred. After 1936, the Roosevelt majorities declined, as deviating Republicans returned to the G.O.P. But the Democratic state and local vote also rose in the North as Roosevelt Republicans realigned or were replaced in the electorate by new pro-New Deal voters who were not inhibited by old allegiances from identifying as Democrats at all levels. And, somewhat later, the Republican state and local vote began its steady rise in the once-Solid South, as conservative Democrats changed parties or were replaced by a new generation willing to identify as Republicans.

In a party system based upon ideology and class, there is no room, obviously, for one-party states. The distribution in the population of basic attitudes toward the realigning issue of the 1930s —activism versus conservatism in domestic policy, to state it in somewhat oversimplified terms—is not likely to differ greatly from region to region or from state to state. And if the activist-

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conservative cleavage in the general population is somewhere near 50-50, then a 70-30 or even a 65-35 division in any state or community of normal socio-economic makeup can only reflect the persistence of old patterns protected by some artificial barrier against conformity with the national party system.

The barriers are of two kinds. The first consists of all the factors that make for the positive attachment of voters to their parties referred to earlier—sentiment, habit, inertia, family or community or group tradition, hope of office or preferment or reward. The other consists of all the factors that make for negative associations with the opposition party, at the state and local level. In the case of the predominantly Republican states of the North, the Democratic party might appear to Roosevelt Republicans as too Catholic, too ethnic, too urban, too labor-dominated, too corrupt, too poorly led, or too disreputable and discredited for any of a wide variety of reasons to make it an appealing political vehicle for them. In two cases, Minnesota and Wisconsin, the mass of the pro-New Deal forces even chose to express themselves through third parties for a time in preference to joining forces with the existing local Democratic organizations. Conservative Democrats of the South saw a Republican party that, besides bearing its ancient stigma, was led by tiny cliques of patronage-oriented "palace politicians" who had no tradition or hope of victory and no desire or competence to build a mass political organization.

To break these barriers necessarily required time. In the case of the positive attachments, those that were not broken in the politically heated New Deal era were not likely to be severed afterward; those barriers had to gradually erode as the voters with the fixed attachments passed from the electorate and new voters free of such attachments took their place. The second set of barriers could be broken only by the remaking of the minority party in each region. This had to await the rise of new and appealing leaders who could capture nominations for office and control of party machinery, thus giving to the minority party a new and attractive image.

In the North, then, the conversion of a one-party Republican state into a two-party battleground in the national pattern typically occurred when the Democratic party came under the control of fresh, reformist leadership—the "programmatic liberals" (typified perhaps by Hubert Humphrey of Minnesota and G. Mennen

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Williams of Michigan). This kind of leadership gave the party its program in the postwar years. Similarly in the South, the establishment of two-party politics occurred when the spiritless "palace politicians" were displaced by dynamic and ambitious leaders, who were also, characteristically, ideologically motivated. Many of them were drawn into active politics during the Barry Goldwater conservative crusade of 1964.

But sooner or later, the barriers did come down and each of the former one-party, or one-and-a-half-party, states moved toward conformity with the national pattern of two-party competition. This movement toward conformity, or *convergence*, is by far the most conspicious influence upon shifts in party strength in the whole forty-year life of the New Deal party system. Most of what has appeared as party realignment throughout the entire period can be explained simply as convergence, as a delayed settling into place of the alignment created in the 1930s—as, in short, the aftershocks of the New Deal earthquake.

### *Crosscutting Issues Since the New Deal*

Yet the aftershock interpretation may not account for all that has happened to party attachments during the past forty years. New issues have arisen of the type that produce political realignments: They cut across the existing party structure; they dominated political debate; they were powerful and emotional in their impact; they polarized large segments of the electorate; and strong political groups formed at the poles. To what extent did they set in motion realigning forces?

Four such new issues can be identified. The first, in the early postwar years, was communism. When the established Republican leaders straddled that divisive issue, a freshman GOP senator, Joseph R. McCarthy, stepped forward to exploit it. Ultimately, the issue failed because both major parties were on the same side. But the issue did hasten the convergence of the Catholic voting pattern with that of the nation by making it respectable for anti-New Deal Catholics, who had been bound to the Democratic party by tradition, to become Republicans.

A second crosscutting issue was Vietnam, in the late 1960s. When neither of the major parties would respond to the rising

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sentiment for extrication from the war, another back-bench Senator McCarthy, Eugene J. this time, undertook to mobilize it. Soon he had competition from Senator Robert F. Kennedy. But before the issue could tear the major parties apart, both yielded. President Johnson retired, his successors in the party leadership shifted to the antiwar position, and President Nixon led his party to the same side. As he began a gradual disengagement, the issue faded, with little realignment consequence.

A third, in the same period, was a cluster of related issues that centered on crime, or "law and order," but spread out as a broader "social issue" that also embraced drugs, student and youth rebelliousness, poor people's marches, welfarism, pornography and a host of related problems that could be attributed to "permissiveness." This cluster of issues was exploited by the Republicans as early as 1964, but when the GOP in 1970 made a deliberate attempt to achieve what Vice President Agnew termed "positive polarization" of the electorate around these issues, it failed. Essentially, the social issue lacked realigning power for the same reason that the communism issue had lacked it two decades earlier: both parties were on the same side, both against crime now as they had been against communism then.

The fourth, which is the only one of the four that still retains vitality, is race. That explosive issue showed its realignment potential as early as 1948, when it gave rise to the Dixiecrat third-party movement that shattered the Democratic Solid South. Many state and local elections since that time, and some national elections, have seen a high degree of polarization on the race issue. Political forces have formed at each pole, gaining strength particularly after the black ghetto riots of 1965-68. One polar group has been dedicated to advancing the demands of the black minority and the other has organized to resist at least some of those demands. And both have been ready to disrupt the existing major parties if that becomes necessary as a means to their respective ends.

If the polar forces formed around the race issue were to continue to grow, then conceivably the two-party system could shift on its axis and organize at the two new poles—the definition of a realignment. Either the major parties could move to the two poles, in which case an existing party—presumably the Republican party,

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since it has no significant black voting strength—would adopt the position of the polar group opposing the demands of the blacks. Or the strong third-party movement that has risen intermittently on the race issue since 1948—most recently in George Wallace's American Independent party of 1968—could continue to grow until it supplanted one of the major parties.

Neither of these eventualities is at all likely. As for the Republican prospects, it is true that President Nixon has taken positions and actions that have appealed to the white resistance—particularly his Supreme Court nominations and his stand on busing. But he has also supported some of the demands of blacks, and many Republicans in Congress have done so even more vigorously. So the national party as a whole continues to span the spectrum of views on racial questions.

An even more significant indicator of the Republican direction is what has happened at the local level. Rarely in the North has the Republican party become the instrument of the "white backlash," despite the obvious opportunities that have existed. Liberal forces in the GOP, including many big contributors and the press, have had sufficient influence to keep their party from any overt and widespread exploitation of racial antipathy. Indeed, the politicians who have become the symbols of white resistance to black demands in the major northern cities have more often been Democrats—in New York City, Philadelphia, Boston, Cleveland, and Los Angeles, as examples. To a considerable extent the same has been true in the South. There the Republican party has been torn between those who would seize openly upon race issues as the means for absorbing the Wallace following, and those who are moderate or even liberal on racial questions. But the former have suffered enough electoral defeats and the latter enough successes to keep the southern Republican party as a whole moving, if at all, in a direction away from racism.

The chances for a third-party movement based upon race to attain the status of a major party is equally remote. At the high point of that movement in 1968, when Governor Wallace won almost 10 million votes as the strongest third-party candidate in nearly half a century, the existing major parties may have had genuine cause for alarm. But Wallace himself did not even try to keep his American Independent party alive; instead, he ran for

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governor of Alabama as a Democrat and by 1972 was a leading competitor in Democratic primaries. Without him as its leader, the American Independent party amounted to nothing in 1972, and since then Wallace has shown no sign of intending to revive it.

So the one crosscutting issue of consequence in the current political scene—race—does not now appear to be leading toward a major realignment of the two-party system. The polar blocs remain, particularly the anti-civil-rights, anti-integration protest bloc that was dislodged from its Democratic moorings in 1948 and has floated with no fixed attachment ever since. But the short-term prospect is only for the continuing instability occasioned by those floating voters as they threaten the major parties and bargain with them. If one makes the optimistic forecast that the United States will move steadily, if slowly, toward solution of its race problems, then one may also predict that this remaining unsettling influence in the political system will weaken correspondingly.

### *Current Trends in Party Strength*

If the crosscutting issues of the last half of the 1960s had had any realignment impact, one would expect to see the results in a net shift to the Republicans, since all of the issues worked against the Democrats. That shift would be reflected in the available statistics —election returns, voter registration figures, and public opinion polls. But none of these show any distinct or measurable new pro-Republican trend during the last decade. All that clearly appears is a continuance of the convergence movement that has been going on throughout the postwar period.

The one region showing a clear pro-Republican shift in the last half of the decade is the South, but there is nothing in the trend line to suggest any factors at work beyond convergence. If significant new realigning forces were being felt, the pro-Republican drift would presumably have been speeded. But as measured by Paul David's Composite B index (which averages the vote for senator, governor, and members of the House of Representatives) the period of sharpest Republican gains was 1958-62, before the new issues developed. Since then, the rate of convergence has markedly slowed down. Figure 1 shows the trend line.

Eighteen northern and western states identified by David as pre-

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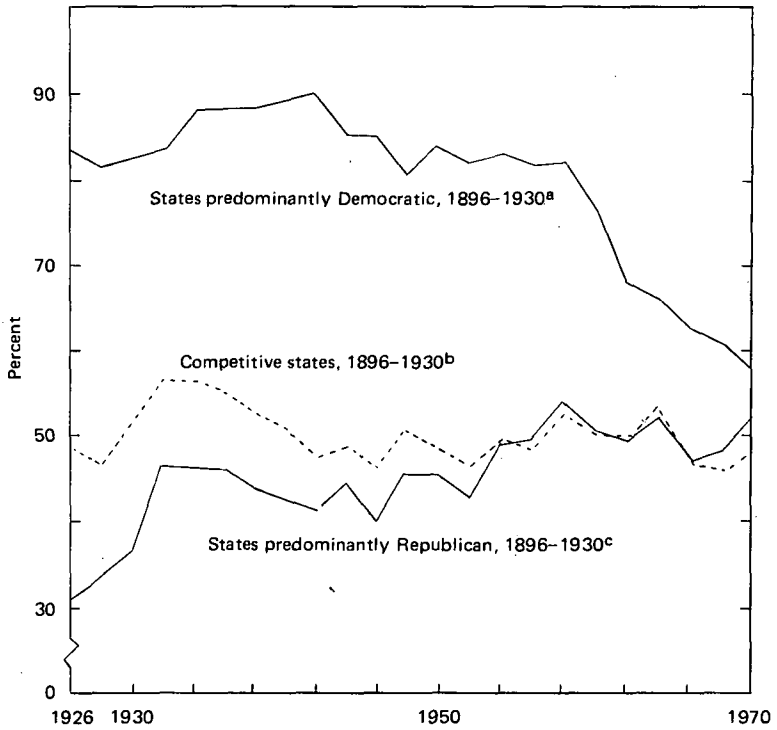
FIGURE 1

*Convergence of Party Strength, as Shown in Democratic Proportion of Vote for Governor, U.S. Senator, and U.S. Representative, 1926–70*




Source: Paul T. David, *Party Strength in the United States 1872–1970* (University Press of Virginia, 1972). Composite B index.

a. Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, Virginia.

b. California, Connecticut, Idaho, Illinois, Iowa, Kansas, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, North Dakota, Oregon, Pennsylvania, South Dakota, Vermont, Washington, Wisconsin.

c. Colorado, Delaware, Indiana, Kentucky, Maryland, Missouri, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, Ohio, Oklahoma, Rhode Island, Utah, West Virginia, Wyoming.

dominantly Republican before the New Deal realignment experienced only a temporary interruption in their pro-Democratic convergence trend, as the figure indicates. They showed greater Democratic strength in 1970 than at any previous time except the party's peak years of 1958 and 1964. The remaining northern and western states, the traditionally competitive two-party states, do

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show a Democratic falloff between 1964 and 1966 that had not been recouped by 1970. But some of the decline, at least, appears to be simply a correction from the abnormally high Democratic vote of the 1958-64 period. This vote was marked by a Democratic landslide resulting from an economic recession at the beginning of the period and another landslide in the Johnson-Goldwater election year at the end. In any case, the Democratic strength remained stable during the 1966-70 period when the crosscutting issues were being exploited most vigorously. What stands out in Figure 1 is not change but continuity.

The absence of new and upsetting forces is indicated also by the party registration figures for five northern states which regularly compile and publish their totals on a state-wide basis. Two of these —Pennsylvania and Oregon—are former predominantly Republican states that have been part of the postwar pro-Democratic convergence movement; that trend showed no break during the political turmoil of the 1960s. West Virginia's long-term shift toward the Democrats likewise continued unabated. The long-term gradual decline in California's Democratic majority from its peak in the 1930s continued through the 1960s with no noticeable rate change. The pro-Democratic convergence trend in upstate New York leveled off after 1967 but it did not turn down sharply, as would be the case if a significant realignment were under way. As for New York City, the late 1960s was a period of Democratic gains at the expense of the Republicans. In sum, there is no indication anywhere in these northern states of a permanent, pro-Republican realignment in the 1960s.

### *Alienation and Independence*

That brings us to the third set of statistics available—the data from public opinion polls. Here quite a different picture emerges. In the polls, a voter does not have to choose between two parties and their nominees; he can call down a plague on both the party houses. And this is increasingly what he has been doing.

Between the mid-1960s, when the Vietnam war, race, and social issues rose to their dominant position, and 1973, the Democratic party lost the allegiance of a net 5 to 7 million voters. *But those voters did not become Republicans. Indeed, since the late 1950s the*

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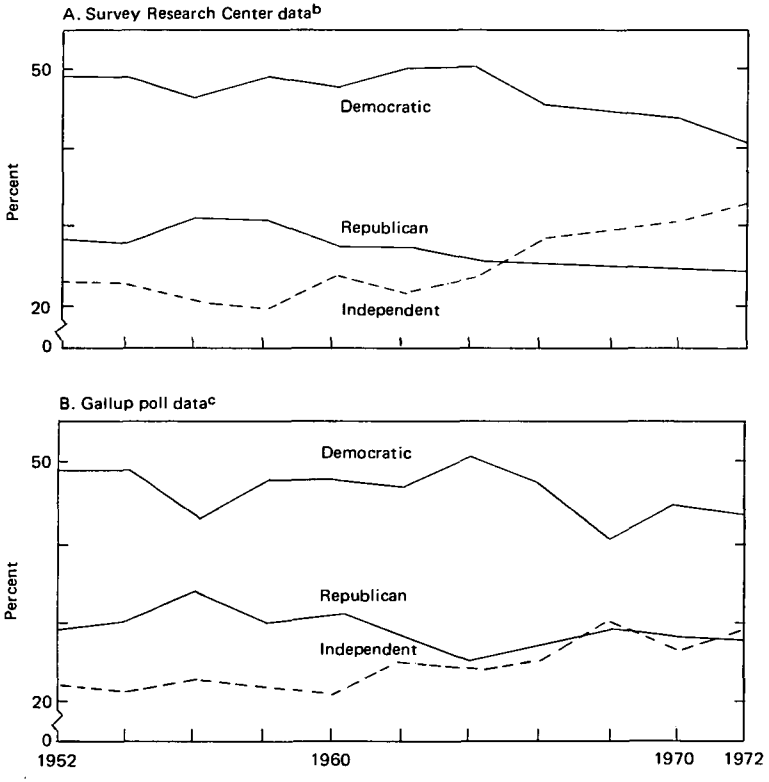
FIGURE 2

*Party Identification of the Electorate, According to Two Public Opinion Surveys, 1952–70*[a]




Sources: Top panel, University of Michigan, Survey Research Center, Ann Arbor, Mich. Bottom panel, American Institute of Public Opinion, Princeton, N.J.

a. Plotted biennially. All figures exclude those who failed to respond to the question or who gave an answer classified as "apolitical," "don't know," or "other party."

b. Each entry based on election survey taken in October or November, except 1956, which averages two surveys in April and October; 1962, which averages two in May and November; and 1964, which averages three in January, May, and October.

c. Each entry based on the average of three surveys taken during calendar year, except 1970 figures, which average polls taken in October 1970 and April and October 1971; and 1972, which represents a single poll (these trend lines were, however, confirmed by 1973 Gallup surveys).

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*GOP has lost the support of about an equal number.* As shown in Figure 2 opposite, the gain has been in the ranks of those who call themselves independents. On election day, these independent attitudes are reflected in a greater amount of ticket-splitting than at any time in the country's history.

An analysis of who made up the ten-million-voter exodus from the major parties in the 1960s may give some clues not only to their motivation but also to whether the major parties will be able to win them back. A comparison of the party identification of various population groups at the beginning and end of the decade, as reported in two Survey Research Center polls, provides some indication of who the ten million defectors were. The principal findings are given in Table 1 (pp. 572-73).

The first thing that stands out in an analysis of the makeup of the two blocs of independent voters is that the increase was entirely attributable to whites (section 2 of the table). Indeed, the white exodus from the major parties was greater than the net movement of both races, for the decade saw a pronounced solidification of party attachment on the part of black voters. Even though the samples of black voters are small, the swing shown is of sufficient magnitude to confirm the evidence from the election returns and from political observers that the Democratic party solidified its hold on the black segment of the electorate during the Kennedy and Johnson years. The remainder of this analysis will, therefore, disregard the blacks and attempt to further identify the white voters who are the new independents.

A comparison of the two surveys shows the Democrats-turned-independents as being mainly in the alienated South (section 3 of the table). Whatever loss the Democrats suffered among some voting groups in the North and West is offset by a corresponding gain in others, leaving their hold on 39 percent of white voters outside the South unchanged. The growth in independent political attitudes in the South is entirely among those opposed to government action to enforce school integration, or without an opinion (section 4 of the table). Southern integrationists show no increase in independent voting.

Another group can be identified among the Democrats-turned-

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TABLE 1

*Changes in Political Affiliation of Various Population Groups, 1960 and 1970*

| Identification of Group | 1960[a] | | | | 1970[a] | | | | Change[a] | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | *N* | *D* | *R* | *I* | *N* | *D* | *R* | *I* | *D* | *R* | *I* |
| 1. *Gross shift in party identification* | | | | | | | | | | | |
| All voters | *1,864* | 46 | 30 | 23 | *1,490* | 44 | 25 | 31 | −2 | −5 | 8 |
| 2. *All voters, by race* | | | | | | | | | | | |
| Whites | *1,700* | 46 | 31 | 23 | *1,324* | 40 | 27 | 33 | −6 | −4 | 10 |
| Blacks | *147* | 50 | 19 | 31 | *144* | 78 | 4 | 18 | 28 | −15 | −13 |
| 3. *Whites, by region* | | | | | | | | | | | |
| South | *542* | 61 | 21 | 18 | *430* | 44 | 18 | 38 | −17 | −3 | 20 |
| Rest of country | *1,158* | 39 | 36 | 25 | *894* | 39 | 31 | 30 | 0 | −5 | 5 |
| Northeast | (431) | (37) | (39) | (24) | (299) | (35) | (31) | (34) | (−2) | (−8) | (10) |
| Midwest | (476) | (36) | (38) | (26) | (390) | (38) | (33) | (29) | (2) | (−5) | (3) |
| West | (251) | (47) | (28) | (25) | (205) | (46) | (26) | (28) | (−1) | (−2) | (3) |
| 4. *Southern whites, by attitude on school integration issue*[b] | | | | | | | | | | | |
| For integration | *118* | 53 | 20 | 27 | *114* | 47 | 26 | 26 | −6 | 6 | −1 |
| Against government action to enforce integration | *332* | 65 | 22 | 13 | *204* | 46 | 19 | 35 | −19 | −3 | 22 |
| Not sure, no opinion | *92* | 58 | 19 | 23 | *80* | 38 | 13 | 50 | −20 | −6 | 26 |
| 5. *Whites, by religious affiliation* | | | | | | | | | | | |
| Protestants | *1,170* | 39 | 38 | 23 | *912* | 37 | 32 | 31 | −2 | −6 | 8 |
| Catholics | *335* | 64 | 18 | 18 | *270* | 52 | 18 | 30 | −12 | 0 | 12 |
| Jews | *57* | 61 | 9 | 30 | *42* | 55 | 5 | 40 | −6 | −4 | 10 |
| 6. *Whites, by age group* | | | | | | | | | | | |
| 20–29 | *228* | 45 | 29 | 26 | *277* | 36 | 19 | 45 | −9 | −10 | 19 |

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TABLE 1 *Continued*

| | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 30–39 | *384* | 49 | 27 | 24 | *239* | 33 | 27 | 40 | −16 | 0 | 16 |
| 40–49 | *384* | 46 | 29 | 25 | *241* | 42 | 24 | 34 | −4 | −5 | 9 |
| 50 and over | *704* | 45 | 36 | 19 | *567* | 45 | 32 | 23 | 0 | −4 | 4 |
| 7. *Whites, by place of residence* | | | | | | | | | | | |
| Central cities in 12 largest metropolitan areas | *186* | 54 | 22 | 24 | *106* | 52 | 25 | 23 | −2 | 3 | −1 |
| Suburbs of 12 largest metropolitan areas | *212* | 32 | 44 | 24 | *218* | 39 | 26 | 35 | 7 | −18 | 11 |
| Other cities (over 2,500) | *628* | 48 | 31 | 21 | *558* | 38 | 28 | 34 | −10 | −3 | 13 |
| Rural | *554* | 49 | 28 | 23 | *442* | 41 | 27 | 32 | −8 | −1 | 9 |
| 8. *Whites, by education* | | | | | | | | | | | |
| Some college | *392* | 33 | 46 | 21 | *352* | 32 | 34 | 34 | −1 | −12 | 13 |
| No college | *1,307* | 50 | 27 | 23 | *968* | 43 | 24 | 33 | −7 | −3 | 10 |
| 9. *Whites, by social class*[c] | | | | | | | | | | | |
| Working class | *1,047* | 51 | 26 | 23 | *655* | 44 | 22 | 34 | −7 | −4 | 11 |
| Middle class | *595* | 37 | 42 | 21 | *627* | 37 | 31 | 32 | 0 | −11 | 11 |

Source: University of Michigan, Survey Research Center, 1960 and 1970 polls. Percentages may not add to 100 because of rounding.

a. N = number of respondents. The apolitical, "don't know," "no answer," and other-party respondents are excluded. They amounted to 4.6 percent of the 1960 sample and 1.1 percent of the 1970 sample. The number of respondents in the different sections of the table are further reduced by eliminating those who did not respond to particular questions or whose responses were not recorded, as well as by those (as in sections 2 and 5) who would be classed as "other."

D = Democrat; R = Republican; I = independent. The numbers under each of these designations are percentages of the number of respondents in the same line.

b. The 1960 survey asked whether the respondent agreed or disagreed with the proposition: "The government in Washington should stay out of the question of whether white and colored children go to the same school." A "disagree" answer is classified as pro-integration. The 1970 question was: "Do you think the government in Washington should: see to it that white and Negro children are allowed to go to the same schools or stay out of this area as it is not its business?"

c. As self-identified.



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independents. The proportion of independents among Catholic voters rose in the decade from 18 to 30 percent, all at the expense of the Democrats (section 5). Since relatively few Catholics live in the South, the defection of that religious group appears to account for a large share of total Democratic losses in the North and West.

People over forty were virtually undisturbed in their party allegiance by the total turmoil of the 1960s. But many younger voters were detached from prior allegiances or were reluctant to form any allegiance at all. Since polling began, younger voters have invariably shown looser party ties than their elders,[2] and this is still the case in our 1960 and 1970 samples. But the significant fact is that, apparently for the first time, individual voters under the age of 40 have actually shown a weakening of party attachment rather than the usual solidification as they have gotten older. Thus 26 percent of the voters who were in their twenties in the 1960s, as shown in section 6 of the table, were independents then, but the proportion had risen to 40 percent ten years later, when they were in their thirties. The proportion of independents in the group that was between thirty and forty in 1960 increased from 24 to 34 percent. Only those over forty maintained the same proportion of party identification. Each age group shows a greater proportion of independent voters than the corresponding age group a decade earlier, and the disparity in the younger age brackets is especially high.

While the Republican losses are distributed among all regions (see section 3 of the table), they are most heavily concentrated in the Northeast, which has also been the region of the GOP's most conspicuous electoral decline, especially in 1964, the Goldwater year. It should be noted that a Republican loss of party identifiers has also occurred in the South, which contradicts the sharp GOP gains in state and local elections. (If the total sample, rather than the white component, is used, the Republican loss in the South is even greater, 5 percentage points instead of 3.) This loss of identifiers confirms the evidence from other polls that most of the new GOP voters in the South still have not crossed the realignment threshold. They consider themselves "independents," not yet

[2] See, for example, the tabulations of various Gallup and SRC polls in Everett C. Ladd, Jr., Charles Hadley, Lauriston King, "A New Political Realignment?" *The Public Interest*, 23 (Spring 1971), 60-61.

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"Republicans."

The Republicans-turned-independents are less easily identified than the former Democrats. But an examination of the many categories of voters into which the Survey Research Center respondents can be divided reveals three groups where independent gains of more than ten points have been made preponderantly or wholly at the expense of the GOP. These groups are identified by place of residence, education, and social class (sections 7, 8, and 9).

The figures show heavy Republican losses in the suburbs of the country's largest cities, among the college educated, and among voters who consider themselves middle class. If these data are combined with those from the other sections of the table and from Figure 2 the prototypical Republican-turned-independent can be described. He or she is a young, middle-class, college-educated, Protestant suburbanite in a large metropolitan area of the Northeast who left the party sometime between 1960 and 1964. Along with "southern-segregationists" and "northern-Catholic-former Democrats," "northern-suburbanite-Protestant-former Republicans" take their place as a third identifiable, substantial element among the ten million new independent voters who appeared in the 1960s.

The movement of all three groups again illustrates the principle of convergence discussed earlier. Over the years each of these three groups has been an anchor of one of the major parties, tied to it by bonds of regional patriotism, of family-community tradition, of class consciousness, of religious or ethnic group identity. With the fraying of some or all of those bonds at an accelerating pace in the postwar years, younger voters in particular have been set free from the party allegiances of the past. Many of these younger voters, who belong to a mobile, better-traveled, better-educated generation, have simply not formed the traditional allegiances at all.

So a growing body of millions of voters remains independent, detached, atomistic, floating. Moreover, party members as well as independents split their tickets with increasing freedom. "I vote for the man, not the party" has become the political norm. David Broder and Haynes Johnson of the *Washington Post* in interviewing voters in twenty precincts around the country in 1970 "found

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it rare to encounter a voter—anywhere—who thinks of politics in terms of political parties."[3]

### *Long-term and Short-term Influences*

Walter Dean Burnham suggests that what has happened since the 1950s, and especially since the mid-1960s, is merely the latest phase in "a secular trend toward the gradual disappearance of the political party in the United States."[4] Burnham dates the beginning of that trend at about the turn of the century. Certainly, at the time of the progressive movement, the political party was in disrepute. The muckrakers condemned it. Political reformers rose up against the party bosses. Many of the reforms they espoused were deliberately designed to weaken the "political machines"; others, if not so intended, had that effect. Ballot reform, nonpartisan elections, replacement of patronage with civil service—all undermined the party machines. Civic groups like the League of Women Voters spread the gospel that it is the "independent" voter who is the watchdog of the political system, who holds the balance of power between two more-or-less corrupt party organizations. This doctrine found its way into high school civics courses. At the same time, the party newspapers, characteristic of the nineteenth century, gave way to the independent press that prevails today. Rare, nowadays, is the metropolitan newspaper that endorses a party slate without deviation; a self-respecting editor feels obliged to advise his readers to split their tickets. The same is true of "good government" groups, ethnic political associations, farm organizations, and even many labor unions. All these influences toward independent politics have had their greatest influence on the more highly educated and economically secure, and the proportion of these citizens has been rising constantly.

With the realignment of the 1930s the parties became more salient, but not to the degree of the nineteenth century. The "onward march of party decomposition," in Burnham's phrase, resumed in the 1950s. By this time, public assistance programs had largely

[3] *Washington Post*, October 9, 1970.

[4] *Critical Elections and the Mainsprings of American Politics* (New York, 1970).

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superseded the parties' welfare activities, and rising pay levels plus improved job security in the private economy had lowered the value of their remaining patronage jobs. Then came a revolution in political campaign techniques that helped to rob the party of one of its basic functions—the organization and management of campaigns. Television became, almost overnight, the principal channel of communication between the candidate and the voter. A party structure might have been needed to stage rallies and torchlight parades and to distribute literature from door to door. For television, however, one needed not political organizers but film makers and advertising specialists. Candidate-marketing firms sprang up and began to crowd the traditional party organizations out of campaign management. Also, professional fund raisers appeared, to challenge the role of the party as an organization for campaign financing.

The party organization lost control not just of campaigning but of the candidate selection process. As the voter lost touch with the party organizations, aspirants for office came to ignore it. Money, media, and marketing could build a political following for an ambitious unknown in the same way and about as quickly as they could build the sales of a new deodorant. Rich men, or men with access to money, could defy the established political organizations and win the party nominations. Some state and local party organizations ceased to even try to influence the party nominating process.

These long-term trends are surely irreversible: the old fashioned, closed political system is not going to be reestablished, the old-style bosses restored to power, media campaigning outlawed, or the levels of affluence and education that make for independent politics reduced. Nevertheless, it is easy to overestimate the degree of change. Insurgents found ways to beat party organizations long before television was invented. The whole progressive movement grew by toppling one entrenched machine after another. Robert La Follette, Sr., Ben Tillman, and Hiram Johnson were able to create powerful personal political organizations even before the days of radio. And George McGovern's success in winning the Democratic presidential nomination in 1972, which was attributed more to superb organization than to superior use of the media, shows that even in the age of television, meticulous old-style organization in

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the precincts is still important, although it may have to be done by new-style people.

If the indicators show a phenomenal growth in ticket-splitting and rejection of the major parties in the 1960s, so do they show a remarkable stability until ten or fifteen years ago. If there was a long-term trend toward party decomposition before the middle or late 1950s, it was so slow as to be at times imperceptible. The party identification data from the polls show nothing like a gradual, steady increase in the proportion of independents; rather they show an essentially level line until the upheaval of the 1960s. Even Burnham's analysis covering ninety years of ticket-splitting in five states[5] shows no increase in one state, Indiana; less ticket-splitting in Michigan in the 1950s than in any decade in this century; and less in Wisconsin in the 1950s than in any decade since 1910. Rhode Island showed very little ticket-splitting before 1956. Only Massachusetts, among the five states, displayed a clear secular trend. Even if one concedes the existence of long-term influences, the sharp, abrupt departures from party regularity that marked the 1960s have to be explained by short-term factors.

The nature of these factors has been suggested. The rise in independent attitudes in the 1960s coincided with the rise to a dominant position of the three powerful and related issues mentioned earlier—race, Vietnam, and the social issue. By cutting across the existing line of party cleavage, these issues blurred the distinction between the major parties and created polar forces that found no satisfactory expression through those parties. Identifying the population groups most affected by the new crosscutting issues also identifies a large proportion of the added millions of voters shown in Table 1 who are rejecting the major parties and calling themselves independents. One group of new independents is the young, the group most alienated by Vietnam. Another consists of southern segregationists, the group most stirred by the race issue.[6] Still another is made up of Catholics, who along with Southerners comprise the blocs most aroused by the social issue. A fourth consists of northern middle-class, well-educated suburbanites of Re-

[5] *Critical Elections*, 111-18, 195-203.

[6] More than half the southerners who voted for Wallace in 1968, reported Gallup, called themselves "independents" in 1969. American Institute of Public Opinion release, July 19, 1969.

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publican antecedents. These latter are the Republicans probably most offended by their party's exploitation of the race issue, particularly during the Goldwater campaign, and its subsequent position on law and order. One cannot say with certainty just why any particular group of voters left their party to take an independent stand, but the coincidence of those who *did* leave their party and those who would be *expected* to leave because of the new issues is strong circumstantial evidence that those issues were the cause.

The party system is always thrown into turmoil when powerful, crosscutting issues are at work. Fluidity, independence, and party switching are characteristic of the prerealignment and realignment periods that such issues generate. The present time—when millions of voters have been jarred loose from past allegiances and are floating unattached in political space—has all the characteristics of a prerealignment period. But, as suggested earlier, race, the one current issue that has the potential to bring about the reidentification of the floating voters in a new alignment, appears highly unlikely to do so.

Alternatively, party systems weakened by the passage of time can be reinforced if powerful new issues arise that run along, rather than across, the existing line of party cleavage. As during a realignment period, parties become relevant again and new and durable party attachments are formed, but this time they are formed on the rationale of the existing party system. Whether a reinforcement of the New Deal party system is likely to occur to arrest the onward march of party decomposition remains to be examined.

### *A Rebirth of the New Deal Party System?*

If the next set of issues to dominate American politics is in the tradition of the activist-conservative and class conflicts of the last four decades, the New Deal party system can be reborn. Just as the crosscutting issues of the 1960s have blurred that line of cleavage, so issues that run along the line, which may be called "coincident" issues, would redefine and sharpen it. Crosscutting issues weaken the attachment of voters to the existing parties; coincident issues reinforce attachments. If the party system seems meaningless when crosscutting issues dominate political debate ("There is

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no difference between the parties," "Neither party takes a clear stand," "Neither party represents my point of view"), it takes on meaning when coincident issues dominate. This was demonstrated most recently in the late 1950s, when the coincident issues of government activism and government spending were the center of party conflict and the proportion of independents in the electorate (see Figure 2) for a time declined.

In the first year of the second Nixon administration, a set of domestic issues squarely coincident with the line of cleavage of the New Deal party system has been rapidly moving back to the center of public and political attention. On the assumption that the country's disengagement from hostilities proves durable and that attention turns away from Watergate, it appears likely that President Nixon's second term—like President Eisenhower's— will be dominated by the same fundamental dispute over the role of government that defined a new party alignment in the 1930s and has reinforced that alignment on so many occasions since.

It was the Republican President who chose the issues when he set out to liquidate through administrative action, in defiance of the Democratic Congress, not only much of what the New Frontier and the Great Society had created, but even programs that had their origin in the New Deal itself. And it was for the activists to defend, and to counterattack.

Responding to the coincident issues, the parties have been taking their familiar stance. Fellow partisans who have been divided by crosscutting issues like Vietnam and busing have drawn together again. Cohesion within the parties has increased, the distance between them has widened, party rhetoric has renewed old themes. The always difficult problem of the out-party in attaining unity has been eased, in this case, by the fact that the President's attack on Democratic programs appears also to be an attack on the powers of the Congress as an institution. (Watergate, of course, has helped to unify it too.) Conservative senators and representatives who might share the President's disdain for the programs their party colleagues have enacted still spring to the defense of the Congress's right to determine when and if those programs are to be dismantled.

Certainly there have been some within the Democratic party, chastened by the events of 1972, who have sought to hold the

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party back from open conflict with the President over the issues of government spending and economy. But the dynamics of the party system suggest that they will not prevail—not for long, at least. If somewhere near half the electorate is activist by philosophy and temperament (the polls suggest that more than half of it is activist on major domestic problems most of the time), the Democrats, as the party on the activist side of the line of party cleavage, are bound to reflect the attitude of that segment of the population. Party leaders who fail to articulate the activism of the party's rank-and-file will not remain leaders. Indeed, the prospect is that those who speak for the Democratic party in the Congress will not only resist the President's proposals to cut back the role of government but will also come up with initiatives of their own to expand that role, as they did during the Eisenhower years, to their political gain. So new issues will be added from both sides to the cluster centered on the question of governmental activism, and as the debate progresses the old line of cleavage between the parties will be sharpened and deepened. The New Deal party system will take on a fresh significance as it copes with the kind of issues for which it was designed.

In the long run, the prospect may well be for a further gradual decomposition of the party system. But there is at least as much reason to believe that in the short run the headlong march toward decomposition that marked the late 1960s will be checked and reversed, that the New Deal party system will be reinvigorated, and that most of those who ceased identifying with one or the other major party in the recent turmoil will reidentify. The parties may not regain the degree of voter loyalty that was accorded them in the crisis days of the Great Depression. But the bonds between voters and party would be restored to something like the strength of the late 1950s and the early 1960s—before Goldwater, Vietnam, Watts and Hough, campus riots and draft card burning, and the Chicago Democratic convention of 1968.

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# Separation of Powers and Executive Privilege: The Watergate Briefs

INTRODUCTORY NOTE: On July 23, 1973, President Richard M. Nixon was served with a subpoena *duces tecum* "command[ing]" him to turn over to a Washington, D.C., federal grand jury the tape recordings of eight specifically identified meetings and one specifically identified telephone conversation that had taken place in his office between June 20, 1972, and April 15, 1973. The grand jury seeking the tapes was the one that had originally investigated the June 17, 1972, break-in of the Democratic National Committee's headquarters at the Watergate. That investigation had led to the indictment of seven low- and middle-level employees of the Republican "Committee for the Re-Election of the President" and their subsequent conviction after trial in early 1973. At the time of the issuance of the subpoena to the President, the grand jury was investigating whether White House aides, other high government officials, or senior officers of the "Committee to Re-elect" had committed perjury during the earlier investigation and prosecution of the Watergate burglary and whether any of them had otherwise conspired to obstruct justice by "covering up" evidence linking them to the illegal activities of the convicted defendants.

Testimony during the summer of 1973 before the Senate Select Committee on Presidential Campaign Activities (also known as the "Watergate" or "Ervin" Committee) had shown that on each of the nine occasions for which the tapes were being demanded, there had been discussions between the President and others about the Watergate break-in, its investigation, possible cover-ups, or all three. The testimony received by the Select Committee was public and thus available to the grand jury. But much of that testimony was in sharp conflict on a number of crucial



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points, such as: Had the President indicated awareness of the plans for the burglary or of any cover-up? Had there been discussions of any offers of executive clemency or money pay-offs for the convicted burglars to insure their continued silence about higher-level involvement? To what extent had any of the White House aides, other government officials, and officers of the "Committee to Re-elect" who participated in the discussions with the President revealed that they themselves had authorized or engaged in illegal acts?

The confrontation over the "executive privilege" issue was precipitated by the revelation that tape recordings of the discussions in the President's office existed. In surprise testimony on July 16, a former deputy assistant to the President told the Select Committee that during the period in which the nine conversations took place, the Secret Service had been automatically recording all conversations in which the President participated, in person or by telephone, while in his offices at the White House or Old Executive Office Building. The tapes, which were purportedly in the custody of the Secret Service, were immediately seen as a means of resolving the conflicts in testimony and furnishing almost indisputable proof of what was actually said by the different participants on the nine occasions the Senate Committee testimony indicated had been critical.

A request for the tapes promptly went to the White House from both the Senate Committee and Special [Watergate] Prosecutor Archibald Cox, who was acting as attorney for the government in the grand-jury proceedings. Cox had been appointed Special Prosecutor by Attorney General Elliot L. Richardson in May of 1973. In a departmental order Richardson had delegated to Cox "full authority for investigating and prosecuting offenses . . . arising out of the unauthorized entry into . . . the Watergate, and . . . allegations involving the President, members of the White House staff, or presidential appointees. . . ." Richardson had also specifically authorized Cox to contest any assertion by the President of "executive privilege."

The President's response to the Senate Committee and Cox requests was to announce that he was assuming personal control of the tapes and would not release them. It was after this announcement that Cox, on behalf of the grand jury, issued the subpoena requiring the President or "any subordinate officer, official, or employee with custody or control" to produce the tapes. Two days later on July 25, the President wrote to District Court Judge John J. Sirica that he would "decline to obey the command of [the] subpoena" because he was "not subject to compulsory process from the courts." Sirica was the presiding judge of the United States District Court for the District of Columbia, under whose seal the subpoena had issued. He was also the judge who empaneled the "Water-

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gate" grand jury, and he had presided over the original Watergate burglary trial. After the President's letter refusing to comply with the subpoena, the grand jury unanimously instructed Cox to apply for a court order directing compliance. Judge Sirica on July 26 signed an order for the President to "show cause" why "full and prompt compliance" should not be forthcoming and "the tapes . . . be produced as evidence before the grand jury."

The President, through his attorneys, thereupon entered a "special appearance" on August 7 in which he asserted that the court "lack[ed] jurisdiction to enter an enforceable order compelling compliance with the subpoena." The President argued that it was his "executive privilege . . . in his official capacity as President of the United States to withhold information the disclosure of which would be contrary to the public interest" and that consequently any attempt to enter such an order "would be an unwarranted and unsupportable violation of the Constitutional doctrine of separation of powers."

A constitutional issue of the highest possible import was thus joined:

> Does the President enjoy an unreviewable "executive privilege" to withhold evidence of conversations in which he participated from a grand jury investigating serious allegations of obstructions of justice by his White House aides and party leaders solely on the basis of his own assertion that he deems production of the evidence to be "contrary to the public interest" and notwithstanding the relevance of those conversations to the question of whether crimes had been committed?

The Constitution does not contain the term "executive privilege" and therefore does not define it. Since George Washington, however, presidents have asserted the right to withhold information demanded at various times by the courts and by Congress. In all past instances either the President eventually provided some or all of the information voluntarily or the courts or the Congress acquiesced in his continued refusal and did not press for a legal order compelling the production of the desired information. The Supreme Court has not, accordingly, ever had occasion to rule directly on whether such an order could be issued to a President, though enough decisions exist on closely related points to enable legal scholars to fashion strong arguments on both sides of the question.

The *Political Science Quarterly* has chosen to publish both the brief submitted to the District Court by the President's attorneys in opposition to the petition for an order directing the production of the tapes and the Special Prosecutor's brief filed in support of such an order. The two briefs give the competing legal arguments and policy considerations that bear on the grand jury's right of access to the presidential tapes. They demonstrate the great complexity of the "executive privilege" issue and of the

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many different sub-issues that are intertwined with it. Because these are the briefs that laid the original legal foundation for the unprecedented lawsuit compelling disclosure by the President of his own conversations, we believe that they are historic documents of lasting value.

Unlike court decisions, texts of original briefs are not widely available, nor have these particular briefs been quoted at any length in the public press. We present the "Watergate" briefs here with the thought that readers of the *Quarterly* will be interested in having the full background for understanding the court decisions that have been made and may yet be made in this momentous constitutional confrontation over the extent of presidential powers.

DEMETRIOS CARALEY AND FRANCES PENN

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| IN RE GRAND JURY SUBPOENA DUCES TECUM ISSUED TO RICHARD M. NIXON, OR ANY SUBORDINATE OFFICER, OFFICIAL, OR EMPLOYEE WITH CUSTODY OR CONTROL OF CERTAIN DOCUMENTS OR OBJECTS | ) | MISC. NO. 47-73 |

BRIEF IN OPPOSITION
[TO AN ORDER TO PRODUCE DOCUMENTS OR OBJECTS IN RESPONSE TO THE SUBPOENA]*

. . .

*SUMMARY OF ARGUMENT*

The present proceeding, though a well-intentioned effort to obtain evidence for criminal prosecutions, represents a serious threat to the nature of the Presidency as it was created by the Constitution, as it has been sustained for 184 years, and as it exists today.

* This brief is printed in its entirety except for an introductory factual statement of the case.

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If the Special Prosecutor should be successful in the attempt to compel disclosure of recordings of Presidential conversations, the damage to the institution of the Presidency will be severe and irreparable. The character of that office will be fundamentally altered and the total structure of government—dependent as it is upon a separation of powers—will be impaired.

The consequence of an order to disclose recordings or notes would be that no longer could a President speak in confidence with his close advisers on any subject. The threat of potential disclosure of any and all conversations would make it virtually impossible for President Nixon or his successors in that great office to function. Beyond that, a holding that the President is personally subject to the orders of a court would effectively destroy the status of the Executive Branch as an equal and coordinate element of government.

There is no precedent that can be said to justify or permit such a result. On the contrary, it is clear that while courts and their grand juries have the power to seek evidence of all persons, including the President, the President has the power and thus the privilege to withhold information if he concludes that disclosure would be contrary to the public interest.

The breadth of this privilege is frequently debated. Whatever its boundaries it must obtain with respect to a President's private conversations with his advisers (as well as to private conversations by judges and legislators with their advisers). These conversations reflect advisory opinions, recommendations, and deliberations that are an essential part of the process by which Presidential decisions and policies are formulated. Presidential privacy must be protected, not for its own sake, but because of the paramount need for frank expression and discussion among the President and those consulted by him in the making of Presidential decisions.

The privilege with regard to recordings was not waived by the decision of the President, in the interest of having the truth about Watergate come out, to permit testimony about portions of those conversations by persons who participated in them. Testimony can be limited, as recordings cannot, to the particular area in which privilege is not being claimed. Nor does the privilege vanish because there are claims that some of the statements made to the President by others in these conversations may have been pursuant to a criminal conspiracy by those other persons. That others may have acted in

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accordance with a criminal design does not alter the fact that the President's participation in these conversations was pursuant to his Constitutional duty to see that the laws are faithfully executed and that he is entitled to claim executive privilege to preserve the confidentiality of private conversations he held in carrying out that duty.

In the exercise of his discretion to claim executive privilege the President is answerable to the Nation but not to the courts. The courts, a co-equal but not a superior branch of government, are not free to probe the mental processes and the private confidences of the President and his advisers. To do so would be a clear violation of the Constitutional separation of powers. Under that doctrine the Judicial Branch lacks power to compel the President to produce information that he has determined it is not in the public interest to disclose.

The issue here is starkly simple: will the Presidency be allowed to continue to function?

## *ARGUMENT*

### I. *Introductory Statement*

The extent to which the Executive Branch has a power or privilege to withhold documents or testimony from the other two branches of government has been correctly described as "one of the most difficult, delicate and significant problems arising under our system." Rogers, *Constitutional Law: The Papers of the Executive Branch*, 44 A.B.A.J. 941, 1012 (1958). There are few authoritative judicial decisions on the matter but this is because the other branches of government have respected claims of privilege by the Executive Branch and have recognized that inappropriateness of seeking resolution in the courts of controversies between branches of government.

Although there have been repeated clashes between Presidents and Congress over the issue from 1796 on, there is no judicial decision whatever on controversies of that kind. See *Soucie* v. *David*, 448 F.2d 1067, 1071 n. 9 (D.C. Cir. 1971). There are decisions on the privilege as it exists against the courts, but these decisions tend to be cautious, Hardin, *Executive Privilege in the Federal Courts*, 71 Yale L.J. 879 (1962), and to be resolved on the narrowest possible grounds. E.g., *United States* ex rel. *Touhy* v. *Ragen*, 340 U.S. 462,

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467 (1951); *United States* v. *Reynolds*, 345 U.S. 1, 6 (1953). Though there is a fairly substantial literature on the question, it is more argumentative than authoritative.

The question is still further clouded by the tendency of all those who have spoken on this question to lump together questions that may require separate answers. Thus courts and writers have not always been careful to distinguish between the President himself, the heads of departments, and subordinates within the executive departments. Nor is it always recognized that the scope of the privilege may be one question, who is to judge of its existence a second question, and whether a decision adverse to the executive could be enforced a third question.

This case, however, does not require a sweeping analysis of the privilege and all of its ramifications. Rather the court is faced with the narrow question of its application to the President of the United States in his most confidential conversations with his intimate advisers. On this question judicial precedents are almost nonexistent. One fact does stand out. No court has ever attempted to enforce a subpoena directed at the President of the United States. No President —and, for that matter, no department head—has ever been held in contempt for refusal to produce information, either to the courts or to Congress, that the President has determined must be withheld in the public interest. Quite commonly Presidents have voluntarily made available information for which a claim of privilege could have been made. That happens very often—and has happened and is happening in this case. But practice throughout our history shows no exception to the rule that the President cannot be forced to disclose information that he thinks it would damage the public interest to disclose.

We do not question the power of the court to issue a subpoena to the President. In *United States* v. *Burr*, 25 F.Cas. 30, 34, No. 14,692d (C.C.D.Va. 1807), Chief Justice Marshall, sitting at circuit, ruled that a subpoena might issue, though he immediately recognized that "difference may exist with respect to the power to compel the same obedience to the process, as if it had been directed to a private citizen * * *." A subsequent Attorney General has ruled that a subpoena may be directed against the President to produce a paper, though the courts would be without power to enforce their process should the President refuse. 25 Op. Atty. Gen. 326, 330-331 (1905). The

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cautious reference to the *Burr* ruling in *Branzburg* v. *Hayes*, 408 U.S. 665, 688 n. 26 (1972), goes no further than to note that Chief Justice Marshall had "opined" that a subpoena might issue. For present purposes, we accept that proposition.

But the power to seek information from the Executive Branch does not impose on the Executive any concurrent obligation to disclose that information. Rather the responsibility of a President to disclose information to a grand jury and to the courts is limited by the Constitutional doctrine of separation of powers. The classic statement of that doctrine is contained in the opinion of the Supreme Court in *Kilbourn* v. *Thompson*, 103 U.S. 168 (1880), where the Court said:

> It is believed to be one of the chief points of the American system of written constitutional law, that all powers intrusted to government, whether State or national, are divided into the three grand departments, the executive, the legislative, and the judicial. That the functions appropriate to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined.

103 U.S. at 190-191. The Court continued:

> In the main, however, that instrument, the model on which are constructed the fundamental laws of the States, has blocked out with singular precision, and in bold lines, in its three primary articles, the allotment of power to the executive, the legislative, and the judicial departments of the government. It also remains true, as a general rule, that the powers confided by the Constitution to one of the departments cannot be exercised by another.
>
> It may be said that these are truisms which need no repetition here to give them force. But while the experience of almost a century has in general shown a wise and commendable forebearance in each of these branches from encroachments upon the others, it is not to be denied that such attempts have been made * * *.

103 U.S. at 191.

This concept of separation of powers, which was recognized by the Supreme Court as early as 1803 in *Marbury* v. *Madison*, 1 Cranch (5 U.S.) 137 (1803), caused Chief Justice Marshall, in the *Burr* case, to qualify his remarks about subpoenaing the President. He said:

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> In no case of this kind would a court be required to proceed against the President as against an ordinary individual. The objections to such a course are so strong and so obvious that all must acknowledge them.

*United States* v. *Burr*, 25 F. Cas. 187, 191-192, No. 14,694 (C.C.D. Va. 1807).

To insist on the doctrine of separation of powers is by no means to suggest that the President is above the law. This is not the case. The President is accountable under the law, but only in the manner prescribed in the Constitution. The distinction was drawn vividly by Attorney General Stanbery in his argument in *Mississippi* v. *Johnson*, 4 Wall. (71 U.S.) 475, 484-485 (1867):

> It is not upon any peculiar immunity that the individual has who happens to be President; upon any idea that he cannot do wrong; upon any idea that there is any particular sanctity belonging to him as an individual, as is the case with one who has royal blood in his veins; but it is on account of the office that he holds that I say the President of the United States is above the process of any court or the jurisdiction of any court to bring him to account as President. There is only one court or quasi court that he can be called upon to answer to for any dereliction of duty, for doing anything that is contrary to law or failing to do anything which is according to law, and that is not this tribunal but one that sits in another chamber of this Capitol. There he can be called and tried and punished, but not here while he is President; and after he has been dealt with in that chamber and stripped of the robes of office, and he no longer stands as the representative of the government, then for any wrong he has done to any individual, for any murder or any crime of any sort which he has committed as President, then and not till then can he be subjected to the jurisdiction of the courts. Then it is the individual they deal with, not the representative of the people.

See the similar statement of position by Alexander Hamilton in *Federalist* No. 69.

Nor is the privilege derived from the doctrine of separation of powers one that is available only to protect the President, or the Executive Branch generally, from the other two branches of government. Each branch of government has claimed, and rightly so, a privilege to do its own business in its own way, without coercion from other branches of government. No other branch of government can compel disclosure of what judges of a court say to each other when the court is in conference. No other branch can require dis-

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closure of discussions about legislative business between a Congressman and his aide. Cf. *Gravel* v. *United States*, 408 U.S. 606 (1972). As Judge Wilkey recently wrote, "the privilege against disclosure of the decision-making process is a tripartite privilege, because precisely the same privilege on conducting certain aspects of public business exists for the legislative and judicial branches as well as for the executive." *Soucie* v. *David*, 448 F.2d 1067, 1080 (D.C. Cir. 1971) (concurring opinion). The Congress has always claimed a privilege for its own private papers. No court subpoena is complied with by the Congress or its committees without a vote of the house concerned to turn over the documents. 448 F.2d at 1081-1082.[1] The Judiciary claims a similar privilege against giving testimony about the official conduct of judges, *Statement of the Judges*, 14 F.R.D. 335 (N.D.Cal 1953); cf. *Fayerweather* v. *Ritch*, 195 U.S. 276, 306-307 (1904). See also the letter of Justice Tom C. Clark, dated November 14, 1953, refusing to respond to a subpoena to appear before the House Un-American Activities Committee, on the ground that the "complete independence of the judiciary is necessary to the proper administration of justice."

All branches of government benefit from the independence secured to them by the Constitutional separation of powers. All

[1] See, e.g., 108 Cong. Rec. 3626 (1962), showing Senate adoption of a resolution permitting staff members and former staff members of a Senate Committee to appear and to testify in a criminal proceeding against James Hoffa but forbidding them from taking any documents or records in the custody of the Senate and from testifying about information that they gained while employed by the Senate. In explaining the resolution to the Senate, Senator McClellan said in part: "The Senate recognizes it has certain privileges as a separate and distinct branch of Government, which it wishes to protect." *Id.* at 3627.

On July 16, 1970, counsel for 1st Lt. William L. Calley, Jr., moved in his court-martial proceeding for production of testimony concerning the My Lai incident presented to a subcommittee of the House Committee on Armed Services in executive session. The subcommittee Chairman, Rep. F. Edward Hebert, refused to make the testimony available, advising defense counsel on July 17, 1970, that Congress is "an independent branch of the Government, separate from and equal to the Executive and Judicial branches," and that accordingly only Congress can direct the disclosure of legislative records. He concluded from this that the material requested by the defense was not within the rule of *Brady* v. *Maryland*, 373 U.S. 83 (1963), nor subject to the requirements of 18 U.S.C. § 3500. Subsequently the military court issued a subpoena to the Clerk of the House of Representatives. The Speaker laid this before the House on November 17, 1970, 116 Cong. Rec. 37652 (1970), but to date the House has taken no action and given no indication that it will supply the information sought.

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America has benefited from the sturdy insistence of all three of the branches, over the years, on preserving that independence.

## II. *The President Has The Power To Withhold Information If He Deems Disclosure To Be Contrary To The Public Interest*

Executive privilege has been aptly described as "a phase of release from requirements common to private citizens or organizations. It is granted by custom or statute for the benefit of the public, not of executives who may happen to then hold office." *Kaiser Aluminum & Chemical Corp.* v. *United States*, 157 F.Supp. 939, 944 (Ct.Cl. 1958) (per Reed, J.) It is a concept essential to the discharge of highly important executive responsibilities. *Carl Zeiss Stiftung* v. *V. E. B. Carl Zeiss, Jena*, 40 F.R.D. 318, 324 (D.D.C. 1966). Whatever uncertainty there may be about the outer boundaries of executive privilege, discussions by the President in his official capacity are at the very heart of the concept.

This follows logically from the President's broad inherent powers under the Constitution. These broad powers were recognized very early in the decision in *Marbury* v. *Madison*, 1 Cranch (5 U.S.) 137 (1803). There Chief Justice Marshall, speaking for the Court, stated:

> By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character, and to his own conscience. To aid him in the performance of these duties, he is authorized to appoint certain officers, who act by his authority and in conformity with his orders.
>
> In such cases, their acts are his acts; and whatever opinion may be entertained of the manner in which Executive discretion may be used, still there exists and can exist no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and being entrusted to the executive, the application of this remark will be perceived by adverting to the act of Congress for establishing the department of foreign affairs. This officer, as his duties were prescribed by that act, is to conform precisely to the will of the President. He is the mere organ by whom that will is communicated. The acts of such an officer, as an officer, can never be examinable by the courts.

1 Cranch at 165-166.

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This principle was restated 35 years later in *Kendall* v. *United States* ex. rel. *Stokes*, 12 Pet. (37 U.S.) 524, 610 (1838), where the Court said:

> The executive power is vested in a President; and as far as his powers are derived from the Constitution, he is beyond the reach of any other department, except in the mode prescribed by the Constitution through the impeaching power.

A. *Privilege against Demands by Congress.* The privilege asserted here derives from the same Constitutional source as, and closely parallels, the executive privilege that has consistently and successfully been asserted in response to Congressional attempts to require production by the Executive Branch.

This long-standing privilege of the executive to refuse Congressional demands does not require extended discussion. From the administration of Washington to the present, Presidents have repeatedly asserted the privilege, and when forced to a showdown, Congress has consistently yielded. Corwin, *The President: Office and Powers, 1787-1957* 113 (4th rev.ed. 1957). A recent instance was the refusal of President Kennedy to disclose the names of Defense Department speech reviewers. Committee on Armed Services, U.S. Senate, *Military Cold War Escalation and Speech Review Policies*, 87th Congress, 2nd Sess., 338, 369-370, 508-509, 725, 730-731 and 1826 (1962). The Senate Subcommittee, speaking through Senator Stennis, conceded:

> We now come face to face and are in direct conflict with the established doctrine of separation of powers * * *
>
> I know of no case where the Court has ever made the Senate or the House surrender records from its files, or where the Executive has made the Legislative Branch surrender records from its files—and I do not think either one of them could. So the rule works three ways. Each is supreme within its field, and each is responsible within its field.

*Id.* at 512.

Reference to the unbroken record of successful assertions of privilege in practice is particularly significant to the doctrine of separation of powers. Uninterrupted usage continued from the early days of the Constitution is weighty evidence of the proper construction of any clause of the Constitution.

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> Both officers, lawmakers and citizens naturally adjust themselves to any long continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into regular practices. That presumption is not reasoning in a circle but the basis of a wise and quieting rule that in determining the meaning of the statute or the exercise of a power, weight should be given to the usage itself—even when the validity of the practice is the subject of investigation.

*United States* v. *Midwest Oil Co.*, 236 U.S. 459, 472-473 (1915).

This is especially important because the doctrine of separation of powers is not stated in express words in the Constitution and because the functioning of our government depends largely upon limits on the power of each branch derived from practical adjustments based on a fair regard by each for the rights of the others. "Even Constitutional power, when the text is doubtful, may be established by usage." *Inland Waterway Corp.* v. *Young*, 309 U.S. 517, 525 (1940).

B. *Scope of the Privilege.* It is well settled that the privilege applies to information relating to national security. *United States* v. *Reynolds*, 345 U.S. 1, 10 (1953). Similarly, it has been applied to information relating to diplomatic affairs. *New York Times* v. *United States*, 403 U.S. 713, 728 (1971) (Stewart, J. concurring).

But the privilege is not confined to specific kinds of subject matters nor, as discussed in the next part of this brief, to particular kinds of communications. Reason dictates a much broader concept, that the privilege extends to all of the executive power vested in the President by Article II and that it reaches any information that the President determines cannot be disclosed consistent with the public interest and the proper performance of his Constitutional duties. The touchstone for a broad concept is provided by President Washington and his cabinet, who concluded that "the Executive ought to communicate such papers as the public good would permit and ought to refuse those the disclosure of which would injure the public. Consequently were to exercise a discretion." 1 Ford, *Writings of Thomas Jefferson* 189-190 (1892).

This broad concept of executive privilege has been acted upon by many subsequent Presidents and has been stated by many Attorneys General. Thus, Attorney General Speed gave the following opinion in 1865:

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> Upon principles of public policy there are some kind of evidence which the law excludes or dispenses with. Secrets of state, for instance, cannot be given in evidence, and those who are possessed of such secrets are not required to make disclosure of them. The official transactions between the heads of departments of the Government and their subordinate officers are, in general, treated as "privileged communications." The President of the United States, the heads of the great departments of the Government, and the Governors of the several States, it has been decided, are not bound to produce papers or disclose information communicated to them where, in their own judgment, the disclosure would, on public considerations, be inexpedient. These are familiar rules laid down by every author on the law of evidence.

11 Op. Atty. Gen. 137, 142-143 (1865). In 1877 Attorney General Devens took the view that production cannot be required of correspondence between the Commissioner of Internal Revenue and a United States attorney if production would be prejudicial to the public interests. 15 Op. Atty. Gen. 378 (1877). In 1893 Attorney General Olney gave the opinion that it is for the President or head of the department having the legal custody of a paper, and "not for the judge presiding at the trial," to determine whether "such general public interest forbids the production of an official record or paper in the courts* * *." 20 Op. Atty. Gen. 557, 558 (1893). In 1905 Attorney General Moody ruled that the head of an Executive Department may properly decline to furnish official records of the department, or to give testimony in a court case, "whenever in your judgment the production of such papers or the giving of such testimony might prove prejudicial for any reason to the Government or to the public interest." 25 Op. Atty. Gen. 326, 331 (1905).

An opinion in 1941 by Attorney General (later Justice) Jackson was directed to investigative reports but rested on a broader principle:

> The courts have repeatedly held that they will not and cannot require the executive to produce such papers when in the opinion of the executive their production is contrary to the public interests. The courts have also held that the question whether the production of the papers would be against the public interest is one for the executive and not for the courts to determine.

40 Op. Atty. Gen. 45, 49 (1941).

President Eisenhower's famous letter of May 17, 1954, directing

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that persons employed in the executive branch were not to testify before a Congressional committee on matters occurring within the executive branch, was supported by a memorandum of Attorney General Brownell, which said in part:

> Courts have uniformly held that the President and the heads of departments have an uncontrolled discretion to withhold the information and papers in the public interests; they will not interfere with the exercise of that discretion, and that Congress has not the power, as one of the three great branches of the Government, to subject the executive branch to its will any more than the executive branch may impose its unrestrained will upon the Congress.

100 Cong. Rec. 6621 (1954).

More recently Assistant Attorney General (now Justice) Rehnquist made a statement in 1971 to the Foreign Operations and Government Information Subcommittee of the House Government Operations Committee in which he asserted that the privilege of the President to withhold information "the disclosure of which he feels would impair the proper exercise of his constitutional obligations" is "firmly rooted in history and precedent." Hearings before the Subcommittee on Separation of Powers of the Committee on the Judiciary, *Executive Privilege: The Withholding of Information by the Executive*, U.S. Senate, 92nd Cong. 1st Sess., at 429 (1971). He continued:

> The President's authority to withhold information is not an unbridled one, but it necessarily requires the exercise of his judgment as to whether or not the disclosure of particular matters sought would be harmful to the national interest.

*Id.* at 431.

C. *Confidential Intra-Governmental Communciations.* The "public interest" standard is admittedly broad and defies precise definition. Nevertheless, it is clear that it applies to confidential intra-governmental communications. Thus, the court in *Carl Zeiss Stiftung* v. *V. E. B. Carl Zeiss, Jena*, 40 F.R.D. 318 (D.D.C. 1966), *aff'd on the opinion below* 384 F.2d 979 (D.C. Cir.), *cert. denied* 389 U.S. 952 (1967) stated:

> While it is agreed that the [executive] privilege extends to all military and diplomatic secrets, its recognition is not confined to data qualifying

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as such. Whatever its boundaries as to other types of claims not involving state secrets, it is well established that the privilege obtains with respect to intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated.

40 F.R.D. at 324. The court continued:

This privilege, as do all evidentiary privileges, effects an adjustment between important but competing interests. There is, on the one hand, the public concern in revelations facilitating the just resolution of legal disputes, and, on the other, occasional but compelling public needs for confidentiality. In striking the balance in favor of nondisclosure of intragovernmental advisory and deliberative communications, the privilege subserves a preponderating policy of frank expression and discussion among those upon whom rests the responsibility for making the determinations that enable government to operate, and thus achieves an objective akin to those attained by other privileges more ancient and commonplace in character. Nowhere is the public interest more vitally involved than in the fidelity of the sovereign's decision-and policy-making resources.

40 F.R.D. at 324-325.

These policy considerations are particularly compelling when applied to Presidential communications with his advisers. As stated by the President on July 6, 1973, in his letter to Senator Sam J. Ervin:

No President could function if the private papers of his office, prepared by his personal staff, were open to public scrutiny. Formulation of sound public policy requires that the President and his personal staff be able to communicate among themselves in complete candor, and that their tentative judgments, their exploration of alternatives, and their frank comments on issues and personalities at home and abroad remain confidential.

Earlier Presidents throughout our history have taken a similar position. The principle was well stated by President Eisenhower on July 6, 1956, in connection with the Dixon-Yates controversy:

But when it comes to the conversations that take place between any responsible official and his advisers or exchange of little, mere little slips, of this or that, expressing personal opinions on the most confidential basis, those are not subject to investigation by anybody, and if they are, will wreck the Government.

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> There is no business that could be run if it—if there would be exposed every single thought that an adviser might have, because in the process of reaching an agreed position there are many, many conflicting opinions to be brought together. And if any commander is going to get the free, unprejudiced opinions of his subordinates, he had better protect what they have to say to him on a confidential basis.

See also. . . .

A distinguished constitutional lawyer has recently observed that refusal to disclose communications of this kind is not only the President's lawful privilege

> but his duty as well, for it is a measure necessary to the protection of the proper conduct of his office, not only by him but, much more importantly, by his successors for all time to come.
>
> * * * It is hard for me to see how any person of common sense could think that those consultative and decisional processes that are the essence of the Presidency could be carried on to any good effect, if every participant spoke or wrote in continual awareness that at any moment any Congressional committee, or any prosecutor working with a grand jury, could at will command the production of the verbatim record of every word written or spoken.

Black, *Mr. Nixon, the Tapes, and Common Sense,* The New York Times, Aug. 3, 1973, p. 31. See also . . .

The wise men who wrote the Constitution of the United States surely would have agreed. On May 29, 1787, as one of their first acts at the Constitutional Convention, they adopted a resolution that their deliberations were to be kept secret. 1 Farrand, *The Records of the Federal Convention of 1787* 15 (1966 ed.). They knew that wise decision-making requires the kind of frank discussion for which confidentiality is essential.

The unique status of Presidential papers, that they are the property of the President and that they often require the highest degree of confidentiality for many years, was recognized by Congress in the Presidential Libraries Act of 1955, Pub. L. 84-373, 69 Stat. 695 (1955), now codified in 44 U.S.C. §§ 2107, 2108. That statute encourages Presidents to give their papers to a Presidential library, and provides that papers, documents, and other historical materials so given "are subject to restrictions as to their availability and use stated in writing by the donors or depositors* * *. The restrictions

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shall be respected for the period stated, or until revoked or terminated by the donors or depositors or by persons legally qualified to act on their behalf." 44 U.S.C. § 2108(c); *Nichols* v. *United States*, 460 F.2d 671 (10th Cir. 1972). The gifts of the papers of Presidents Kennedy and Johnson, for example, both provide that "materials containing statements made by or to" the President "in confidence" are to be held under seal and not revealed to anyone except the donors or archival personnel until "the passage of time or other circumstances no longer require such materials being kept under restriction." Agreement of Feb. 25, 1965 between Mrs. Jacqueline B. Kennedy and the United States; Letter of Aug. 13, 1965, from President Lyndon B. Johnson to the Administrator of General Services.[2]

These reasons apply with special force when recordings of Presidential conversations are sought. Recordings are the raw material of life. By their very nature they contain spontaneous, informal, tentative, and frequently pungent comments on a variety of subjects inextricably intertwined into one conversation. Disclosure of information allegedly relevant to this inquiry would mean disclosure as well as other information of a highly confidential nature relating to a wide range of matters not relevant to this inquiry. Some of these matters deal with sensitive issues of national security. Others go to the exercise by the President of his Constitutional duties on matters other than Watergate. The nature of informal, private conversations is such that it is not practicable to separate what is arguably relevant from what is clearly irrelevant. Once the totality of the confidential nature of the recordings is destroyed, no person could ever be assured that his own frank and candid comments to the President would not eventually be made public. Nor should this Court be misled by the seemingly modest request to hear recordings of a few conversations. These conversations could not be properly understood without listening also to many other conversations, and once the principle was

[2] The letter from President Johnson specifically prohibits disclosure to "public officials." It states, as the reason for these restrictions, that "the President of the United States is the recipient of many confidences from others, and * * * the inviolability of such confidence is essential to the functioning of the constitutional office of the Presidency * * *." In both respects this is identical with what President Eisenhower said in giving his papers to the United States. Letter of April 13, 1960, from President Dwight D. Eisenhower to the Administrator of General Services.

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established that the most confidential records of the Presidency can be ordered produced for a grand jury, the present subpoena would be only the first installment of requests for many more of the President's most confidential conversations. No government can function if its internal operations are to be subject to that kind of open scrutiny.

This point is recognized by even those who take a hostile view of executive privilege. Fifteen years ago Representative Meader made a slashing attack on what he called "a non-existent, imaginary so-called Executive privilege." 104 Cong. Rec. 3853 (1958). After stating his argument against executive privilege generally, however, he said: "The foregoing reasoning, of course, does not apply to the important constitutional powers of the President, his power to execute the laws, his powers as Commander-in-Chief of the Armed Forces, and his power to conduct diplomatic relations." *Id.* at 3851. A leading contemporary critic of executive privilege is Professor Raoul Berger, who has written a 156-page article setting out his controversial views on the limited scope of the privilege. He recognizes very clearly, however, that discussions between the President and his close advisers stand on a very different footing from the more usual kinds of claim of executive privilege to which he is so strongly opposed.

> President Jackson's refusal to reveal a statement he made *to his Cabinet* is a remote analogy, because such confidential communications—what Marshall labelled "secrets of the cabinet"—are poles apart from an unlimited discretion to withhold any document or communications between the several million subordinate employees in the interest of "administrative efficiency."

Berger, *Executive Privilege* v. *Congressional Inquiry*, 12 UCLA L. Rev. 1043, 1289-1290 (1965) (emphasis in original). Again at 1331 he says:

> "Judicial deliberations" are better compared to conferences between the President and a Cabinet member, for which a privilege was recognized in *Marbury* v. *Madison* or Presidential communications with other high military or civil officers, which at least one congressional committee recognized. But it is farfetched to compare the conferences of two lowly subordinates, or of subordinate with a lower echelon chief, with consultation between a judge and his immediate aide or the President with a department head.

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D. *Privilege Not Waived.* It seems to be suggested in paragraph 9 of the Petition for an Order to Show Cause that any claim of executive privilege has been waived with regard to this investigation by the grand jury. This suggestion will not withstand analysis. In his statement of May 22nd, appended to and referred to in the Petition, the President said that "executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up." It is one thing to permit testimony on a specific subject, for testimony can be confined to information that relates to that particular subject and can avoid reaching extraneous material, the disclosure of which is contrary to the public interest. With these recordings, as has been indicated, that is not possible.

Indeed, the short answer to any claim of waiver with regard to the materials now sought may be found in *United States* v. *Reynolds*, 345 U.S. 1 (1953). In that case the United States refused to produce an Air Force investigation report of an airplane crash as well as written statements by the survivors of the crash. It offered to allow the survivors to give depositions and to testify as to all matters except those of a "classified nature." The Supreme Court sustained the claim of privilege with regard to the documents sought. The offer to allow the witnesses to testify, far from being a waiver of privilege as to the documents, was expressly relied on by the Supreme Court as a reason for upholding the claim of privilege. 345 U.S. at 11.

To apply a waiver notion to executive privilege would be self-defeating, for a President then could not disclose any information without risk that this might be construed as a waiver with regard to other information that, in the public interest, he feels cannot be disclosed. The practice under which Presidents volunteer a great deal of information, because it is in the public interest to do so, would come to an end if the President thus jeopardized the confidentiality of things that cannot be disclosed.

Nor is there any waiver because the President has permitted a few of these tapes to be heard by a very few people. Whenever the President has confidential information, he is free to disclose it to those persons, in and out of government, in whom he has confidence and from whom he seeks advice.

E. *Charges of Criminal Conduct.* Executive privilege does not

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vanish because the grand jury is looking into charges of criminal conduct. No case so holds. There is no body of practice to this effect. Many of the celebrated instances in the past in which Presidents have refused to produce information in their custody have involved charges of criminal misconduct. It is true that the instances in the past have been refusals to give the material to Congress, but the Presidential privilege to withhold confidential information where the public interest so requires stems from the Constitutional separation of powers. There is nothing in Constitutional theory to suggest that the Chief Executive is separate from the Legislative Branch but inferior to the Judicial Branch. Only last year in *Branzburg* v. *Hayes*, 408 U.S. 665 (1972), the Supreme Court, in recognizing that ordinarily a grand jury has the right to every man's evidence, immediately qualified that by adding "except for those persons protected by a constitutional, common-law, or statutory privilege." 408 U.S. at 688.

In this connection it is worth quoting in part what the Special Prosecutor said in his letter of July 18, 1973, to J. Fred Buzhardt, Esq., in support of his request for the tapes that are now the object of a subpoena.

> First, the request is part of an investigation into serious criminal misconduct—the obstruction of justice. The tapes are material and important evidence—quite apart from anything they show about the involvement or non-involvement of the President—because the conversations recorded in all probability deal with the activities of other persons under investigation. Indeed, it is not implausible to suppose that the reports to the President on these occasions may themselves have been made pursuant to a conspiracy and as part of a cover-up.

In that passage the Special Prosecutor quite properly bases his request on his claimed need for the tapes "quite apart from anything they show about the involvement or non-involvement of the President." If there were any question of Presidential involvement in the crimes the Special Prosecutor is investigating—and the President's statements have categorically denied any such involvement—this would not be within the jurisdiction of this Court, the Special Prosecutor, or the grand jury. The President of the United States is, as we have pointed out in the Introductory Statement, not above the law. He is liable to prosecution and punishment in the ordinary

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course of law for crimes he has committed but only after he has been impeached, convicted, and removed from office. U.S. Const., art. I, § 3; *Federalist* No. 69 (Hamilton); *Kendall* v. *United States* ex rel. *Stokes*, 12 Pet. (37 U.S.) 524, 610 (1838).

It may well be, as the Special Prosecutor suggests, that statements made by other persons to the President at the meetings for which the recordings have been subpoenaed were made by them pursuant to a conspiracy to obstruct justice. Executive privilege cannot be claimed to shield executive officers from prosecution for crime, *Gravel* v. *United States*, 408 U.S. 606, 627 (1972). Similarly, it can "never be justified as a means of covering mistakes, avoiding embarrassment, or for political, personal or pecuniary reasons." Rogers, *Constitutional Law: The Papers of the Executive Branch*, 44 A.B.A.J. 941 (1958). It is precisely with these considerations in mind that the President has not asserted executive privilege with regard to testimony about possible criminal conduct or discussions of possible criminal conduct.

But although remarks made by others in conversations with the President may arguably be part of a criminal plan on their part, the President's participation in these conversations was in accordance with his Constitutional duty to see that the laws are faithfully executed. It is the President, not those who may be subject to indictment by this grand jury, who is claiming executive privilege. He is doing so, not to protect those others, but to protect the right of himself and his successors to preserve the confidentiality of discussions in which they participate in the course of their Constitutional duties, and thus ultimately to protect the right of the American people to informed and vigorous leadership from their President of a sort for which confidentiality is an essential prerequisite.

Executive privilege would be meaningless if it were to give way whenever there is reason to suspect that disclosure might reveal criminal acts. It is possible to conceive of circumstances in which discussions of sensitive foreign affairs matters or of the most highly classified military secrets might include remarks that would arguably show criminal conduct by a Presidential adviser. It is unthinkable that discussions of that kind could be produced to a grand jury, a petit jury, or to the public, even though the alternative may be to make a successful prosecution impossible. But it is not only in the realm of national security that it must be for the President to decide

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what the public interest permits to be disclosed. It is just as important that the President be able to talk frankly with his advisers about domestic issues as about military or foreign affairs. Any other view would fragment the executive power vested in him and would assume that some of his Constitutional responsibilities are more important than others. He—and he alone—must weigh the interest in prosecuting a wrongdoer against the interest in keeping all Presidential conversations confidential.

That choices of this kind must be made is so well accepted that it is surprising that there should be an argument to the contrary. In many contexts in the criminal law the United States will be told that it should make available information in its possession. In these situations, however, the United States is given a choice. Either it must produce the needed information—whether it be a Jencks Act statement, the name of an informer, or information on electronic surveillance—or suffer the consequences to the prosecution, which may well include its dismissal.

> The burden is the Government's, not to be shifted to the trial judge, to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of state secrets and other confidential information in the Government's possession.

*Jencks* v. *United States*, 353 U.S. 657, 672 (1957). Accord: . . .

It is not the President's view that refusal to produce these tapes will defeat prosecution of any who have betrayed his confidence by committing crimes. It is his expectation that the other evidence available to the Special Prosecutor, together with testimony from witnesses with regard to whom the President has not claimed executive privilege and documentary evidence that the President has been and will be making available to the Special Prosecutor, will suffice to convict any lawbreakers. But the President has concluded that even if he should be mistaken about this in some particular case, the public interest in a conviction, important though it is, must yield to the public interest in preserving the confidentiality of the President's office.

That is a decision that only the President can make. It is not for the trial judge. Indeed, in the passage just quoted from the *Jencks* case the Supreme Court stated explicitly that the burden of that

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choice is "not to be shifted to the trial judge." It is not a choice for the prosecutor. In the ordinary case it is a choice that would have to be made by senior government officials. When Presidential papers are involved, it is a choice that must be made by the President himself.

The President has concluded that it would be detrimental to the public interest to make available to the Special Prosecutor and the grand jury the recordings sought as item 1 of the subpoena. That decision by the President is in itself sufficient cause for this Court to proceed no further to seek to compel production of those records.

### III. *This Court Lacks the Power To Compel Production of the Recordings*

There is no case in which the courts have actually compelled the executive to disclose information when the executive thinks it would be detrimental to the public interest to do so, nor is there any case in which the courts have undertaken to hold the President or a department head in contempt for failure to make a disclosure. Admittedly, some courts have claimed the power to decide for themselves whether executive privilege has been appropriately claimed and to weigh for themselves whether the harm to the national interest from disclosure is outweighed by the need of litigants for the information, but no court has compelled production of the information itself if the Executive Branch disagrees with the court's ruling on that issue. Other sanctions may be imposed. Production of executive documents cannot be required.

Although it was a civil case, *United States* v. *Reynolds*, 345 U.S. 1 (1953), is instructive. That was a suit under the Tort Claims Act for the death of three civilians in the crash of a B-29 while it was testing secret electronic equipment. The United States, through the Secretary of the Air Force, made a formal claim of privilege against being required to produce during discovery the Air Force's official accident investigation report and the statements of surviving crew members. The United States asserted that the aircraft in question was engaged in a highly secret mission of the Air Force, and thus invoked the executive privilege for military secrets, which, as the Supreme Court said, is recognized "by the most outspoken critics of governmental claims to privilege." 345 U.S. at 7.

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Although the Court in *Reynolds* was unwilling to hold that a claim that military secrets would otherwise be revealed is conclusive on the courts, 345 U.S. at 9-10, it outlined the balancing process that must be followed before a court should call for production or even call for *in camera* inspection. If, from all the circumstances of the case, the claim of privilege is sufficiently strong, "the court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers." 345 U.S. at 10. In considering the claim of privilege, there must be a balancing of the litigant's need for the information against the public interest in keeping it confidential. "Where there is a strong showing of necessity, the claim of privilege should not be lightly accepted, but even the most compelling necessity cannot overcome the claim of privilege if the court is ultimately satisfied that military secrets are at stake." 345 U.S. at 11. In the particular case before it, the Court held that it was obvious from the circumstances that there was a reasonable danger that the accident investigation report would contain references to the secret electronic devices while the plaintiffs' need for the information was slight, since the United States had agreed to allow the surviving crew members to give testimony and plaintiffs might be able to prove negligence through that testimony. Under these circumstances the Court ruled that the claim of privilege should have been upheld . . . and that the district court erred in imposing a sanction against the United States for its refusal to produce the documents for *in camera* inspection.

The principles announced in *Reynolds* have been applied by the lower courts to all claims of executive privilege, whether dealing with military secrets or with other kinds of information. See *Carl Zeiss Stiftung* v. *V. E. B. Carl Zeiss, Jena*, 40 F.R.D. 318, 324 (D.D.C. 1966), *aff'd on the opinion below* 384 F. 2d 979 (D.C. Cir.), *cert. denied* 389 U.S. 952 (1967); 8 Wright & Miller, *Federal Practice and Procedure: Civil* 170-172 (1970). The courts have been circumspect in substituting their judgment for that of the executive officer, or in calling for *in camera* inspection. There are cases in which they have ruled in favor of production, *id.* at 169 n. 23, but none of those cases involve a Presidential claim of the privilege with its obvious special considerations. And, at the risk of repetition, it is worth repeating that in no case has a court used compulsory process or the

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contempt power to require production of information that the court thinks ought to be produced, either for the parties or for the court *in camera*. Refusal to comply with a court's decision that information ought to be produced has other adverse consequences to the government's position in the litigation but the information itself remains confidential if the executive determines that the public interest requires this resolution.

Although there may be instances where court scrutiny is appropriate, a different question is presented in cases involving intragovernmental confidential communications. Here the privilege takes on a virtual immunity from inquiry. The judiciary, the courts declare, is not authorized "to probe the mental processes" of an executive or an administrative office. *Morgan* v. *United States*, 304 U.S. 1, 18 (1938). This rule forecloses investigation into the methods by which a decision was reached, *United States* v. *Morgan*, 313 U.S. 409, 422 (1941), the matters considered, *Fayerweather* v. *Ritch*, 195 U.S. 276, 306-307 (1904), the contributing influences, *Chicago, B & O Ry. Co.* v. *Babcock*, 204 U.S. 585, 593 (1907), or the role played by the work of others, *Kaiser Aluminum & Chem. Corp.* v. *United States*, 157 F. Supp. 939, 946-947 (1958) (per Reed, J.)—results demanded by exigencies of the most imperative character. No judge could tolerate inquisition into the elements making up his decision—indeed "public examination of a judge would be destructive of the judicial responsibility"—and by the same doctrine "the integrity of the administrative process must be equally respected." *United States* v. *Morgan*, 313 U.S. 409, 422 (1941). Equally sound reasons dictate that a protection no less extensive be afforded the processes by which a President's responsibility for decision-making and policy formulation, legal or otherwise, are discharged.

In the present case, there is no showing whatever of necessity for production of the recordings except for the conclusory statement in the Petition for an Order to Show Cause that the recordings "are relevant and important evidence in the Grand Jury's investigation." Here, as in the *Reynolds* case, testimony of those who participated in these meetings has been made available, because of the President's disclaimer of executive privilege with regard to testimony by his aides concerning possible criminal conduct or discussions of possible criminal conduct in the matters presently under investigation. Much other evidence, both documentary and testimonial, is available to

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the Special Prosecutor, including a significant amount of material furnished him by the President. Doubtless the Special Prosecutor would like to have the recordings to test their consistency with testimony now being given by participants in the conversations that were recorded. Doubtless the plaintiffs in *Reynolds* would have liked to have had the contemporaneous statements of the survivors of the crash, as well as the report of the Air Force investigation, to test their consistency with the testimony later made available from the survivors. That was not enough to justify even *in camera* inspection in *Reynolds*. It is not enough here, particularly when the circumstances here show that the recordings involved are of confidential conversations with the President of the United States, material raising the strongest possible claim of privilege.

Whatever may be the case with a department head, as in the *Reynolds* case, it is not appropriate for the courts to purport to weigh a claim of privilege by the President himself. Since the courts are without power to compel compliance with a decision overruling a claim of privilege by the President, any consideration by the courts would be a meaningless issue.

> By the constitution of the United States, the President is invested with certain important powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience.

*Marbury* v. *Madison*, 1 Cranch (5 U.S.) 137, 165 (1803). Again in *Kendall* v. *United States* ex rel. *Stokes*, 12 Pet. (37 U.S.) 524 (1838), the Court distinguished between requiring a department head to do a purely ministerial act and requiring the President to act in a matter within his discretion. It said of the President, at 610, that "as far as his powers are derived from the constitution, he is beyond the reach of any other department, except in the mode prescribed by the constitution through the impeaching power."

The issue was squarely presented in *Mississippi* v. *Johnson*, 4 Wall. (71 U.S.) 475 (1867). The Court there refused to entertain a bill seeking to enjoin President Andrew Johnson from enforcing the Reconstruction Acts. In his argument in that case Attorney General Stanbery discussed the *Marbury* and *Kendall* cases and noted that the writs sought in those cases ran only against cabinet officers

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rather than against the President himself. He pointed out that if a cabinet officer could be imprisoned for contempt for disobedience of a court order, his duties could be performed by a deputy or a new member of the cabinet could be appointed. If, however, the President were to be imprisoned for contempt, he would be disabled from performing his constitutional duties, though he would still, in the absence of impeachment, retain the office. 4 Wall. at 489-490.

The Supreme Court ruled that it had "no jurisdiction of a bill to enjoin the President in the performance of his official duties." 4 Wall. at 501. As one of the reasons for this conclusion, it had noted: "Suppose the bill filed and the injunction prayed for allowed. If the President refuse obedience, it is needless to observe that the court is without power to enforce its process." 4 Wall. at 500-501. At another point it said:

> An attempt on the part of the judicial department of the government to enforce the performance of such duties by the President might be justly characterized, in the language of Chief Justice Marshall, as "an absurd and excessive extravagance."

4 Wall. at 499.

In the light of these precedents Attorney General Moody was clearly right when he ruled that "it seems clear that while a subpoena may be directed against the President to produce a paper, or for some other purpose, in case of his refusal to obey the subpoena, the courts would be without power to enforce process." 25 Op. Atty. Gen. 326, 330-331 (1905).

The commentators have agreed. The then-Executive Editor of the Washington Post, an outspoken critic of executive privilege, says: "That the President himself enjoys practical immunity from the enforcement of legal process in wide areas must be acknowledged." Wiggins, *Government Operations and the Public's Right to Know*, 19 Fed. B.J. 62, 74 (1959). See also 8 Wigmore, *Evidence* § 2370 (McNaughton rev. 1961), suggesting that the executive may be under a testimonial duty to be a witness. He regards this as a different question from whether compulsory process can issue to enforce that duty and says: "That the enforcement of the duty is constitutionally impossible is still consistent with its existence."

This is not to suggest that the courts are powerless in the face of

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executive refusals. In civil litigation to which the United States is a party, sanctions other than contempt are available for failure to produce material that the court thinks not privileged. Thus in *O'Neill* v. *United States*, 79 F. Supp. 827, 830 (E.D. Pa. 1948), the court recognized that because of "the separateness and mutual independence of the three coordinate branches of the government," compulsory process or contempt against the Attorney General would be barred, but held that under Civil Rule 37 other sanctions could be imposed that might cause procedural disadvantages to the United States or even cause it to lose its case. Indeed, this was the sanction applied by the lower courts in the *Reynolds* case itself, and it would have been the appropriate sanction had not the Supreme Court determined that the claim of privilege was so compelling that it was error to order *in camera* inspection. Both the District Court and the Court of Appeals had held that the appropriate sanction, after the government refused to comply with a court order to produce documents for *in camera* inspection, was to rule that the facts on negligence would be taken as established in plaintiffs' favor. See *United States* v. *Reynolds*, 345 U.S. 1, 5 (1953). Even with regard to department heads the courts can neither compel production of documents nor punish the department head for contempt. 8 Wigmore, *Evidence* § 2379, at 815 (McNaughton rev. 1961); 4 Moore, *Federal Practice* par. 26-61 [5. -1], at 26-287 (2d ed. 1970). The immunity of the President from compulsory process is even clearer than that attaching to department heads.

As has been pointed out earlier in this brief, the practice in criminal litigation is similar. The court may require the government to choose between producing documents or damaging its chances for a successful prosecution, but the court cannot require that the documents be produced nor can it even require that they be submitted for *in camera* inspection.

The motion of the Special Prosecutor asks the Court to compel the President of the United States to produce material that he has determined that the public interest requires be kept confidential. It thus asks the Court to substitute its judgment for that of the President on a matter entrusted to the President by the Constitution, and calls for the Court to issue an order of a sort that the Judicial Branch lacks power to enter against the President of the United States.

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*Conclusion*

The result for which we have argued is supported by such precedent as exists. It is supported by premises that are, and have always been, at the heart of our Constitutional system. It is supported by the unvarying practice of 184 years. It is supported finally, and most importantly, by the consequences that would follow if any other result were to be reached.

Were it to be held, on whatever ground, that there is any circumstance under which the President can be compelled to produce recordings or notes of his private conversations, from that moment on it would be simply impossible for any President of the United States to function. The creative interplay of open and spontaneous discussion is essential in making wise choices on grave and important issues. A President would be helpless if he and his advisers could not talk freely, if they were required always to guard their words against the possibility that next month or next year those words might be made public. The issue in this case is nothing less than the continued existence of the Presidency as a functioning institution.

For all of the foregoing reasons, the motion of the Special Prosecutor should be denied.

Respectfully submitted,

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August 7, 1973

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

| | | |
|---|---|---|
| IN RE GRAND JURY SUBPOENA DUCES TECUM ISSUED TO RICHARD M. NIXON, OR ANY SUBORDINATE OFFICER, OFFICIAL, OR EMPLOYEE WITH CUSTODY OR CONTROL OF CERTAIN DOCUMENTS OR OBJECTS | ) | MISC. NO. 47-73 |

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MEMORANDUM IN SUPPORT OF AN ORDER
TO PRODUCE DOCUMENTS OR OBJECTS
IN RESPONSE TO THE SUBPOENA*

. . .

*SUMMARY OF ARGUMENT*

I

The President has an enforceable legal duty not to withhold material evidence from a grand jury. The grand jury occupies a fundamental position in the administration of public justice. There is no exception for the President from the guiding principle that the public, in the pursuit of justice, has a right to every man's evidence. These propositions were recognized as early as 1807 in *United States* v. *Burr*, 25 Fed. Cas. 30 (No. 14,692d) (C.C.D. Va. 1807). They have critical importance in a grand jury inquiry into gross misconduct by high officials in the Executive Offices of the President.

The decision in *United States* v. *Burr* is but a specific application of two historic constitutional principles: (1) even the highest executive officials are subject to the rule of law, which it is emphatically the province and duty of the courts to declare; and (2) the rights and obligations of the President and other high executive officers are defined and judicial orders are entered on the premise that these officials, rather than interpose their naked power, will obey the law's

* This brief is printed in its entirety except for an introductory factual statement of the case and a detailed description of the conflict in testimony in each of the nine conversations for which the tapes were being demanded.

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explicit and particularized commands. Accordingly, the Court of Appeals for this Circuit, like every other Federal court, has rejected the claim that absolute executive privilege flows from the constitutional separation of powers. It has ruled that it is for the Judiciary—not the Executive—to determine what materials may be held confidential because of a particular exigency and what evidence must be produced. *Committee for Nuclear Responsibility, Inc.* v. *Seaborg*, 463 F.2d 788, 792-94 (D.C. Cir. 1971).

The subpoena was properly directed to the President, and the Court has power to enforce it. Counsel's claim that the President, because of his great powers, has immunity from orders enforcing legal obligations is inconsistent with our entire constitutional tradition. The President cannot be limited by judicial intrusion into the exercise of his constitutional powers under Article II. Here, however, the grand jury is not seeking to control the President in the exercise of his constitutional powers, for, as we show, he has no constitutional power to withhold the evidence sought by the subpoena merely by his own declaration of the public interest. The grand jury is seeking evidence of criminal conduct that the President[1] happens to have in his custody—largely by his personal choice. All the Court is asked to do is hold that the President is bound by legal duties in appropriate cases just as other citizens—in this case, by the duty to supply documentary evidence of crime. In the language of the authoritative precedents, this is a "ministerial duty."

Contrary to counsel's argument, enforcement of the subpoena would not create the threat of "potential disclosure of any and all conversations' (Brief in Opposition 586-587),[2] nor does our submission suggest that every participant in a Presidential conversation would have to speak "in continual awareness that at any moment any Congressional committee, or any prosecutor working with a grand jury, could at will command the production of the verbatim record of every word written or spoken" (Brief in Opposition 598). Not only are the facts of the case much narrower, but a settled

[1] For the sake of readability, the word "President" was substituted for the legal term "respondent" wherever the latter appeared in the original brief. The citation "S. Tr." refers to the transcript of hearings of the Senate Select Committee on Presidential Campaign Activities. Ed.

[2] The page numbers in citations of the "Brief in Opposition" have been changed to refer to the brief as reprinted in the *Quarterly, supra*, not to the pagination of the original brief. Ed.

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rule of evidence protects a broad range of Presidential papers and conversations against disclosure *when the Court decides*—after *in camera* inspection when necessary—that the public interest in the secrecy of the particular items outweighs the need for the evidence in the administration of justice.

II

The present case does not fall within the traditional rule of executive privilege as administered by the courts. Counsel for the President wisely refrain from pressing such a claim. Under the usual rule, the Court—not the President—determines whether particular documents are privileged by weighing the need for the evidence against any governmental interest in secrecy. Here, the only possible governmental interest in secrecy is encouraging openness and candor in giving advice and promoting the free flow of discussion in deliberations upon executive policy by assuring a measure of confidentiality. Preservation of secrecy is unwarranted in the present case for two independent reasons. First, the interest in confidentiality is never sufficient to support an official privilege where there is reason to believe that the deliberations may have involved criminal misconduct. Second, under the particular circumstances of the present case, the need of the grand jury for the critically important evidence provided by the recordings upon a question of wrongdoing by high officials and party leaders easily outweighs the slight risk to the freedom of executive discussions. There will be few occasions upon which a grand jury will have similar cause to believe there may be material evidence of the criminality of high officials in the papers and documents in the Executive Office of the President. The aides of future Presidents are not likely to be timid because of this remote danger of disclosure. If there be some small risk of greater reticence, it is not too great a price to pay to preserve the integrity of the Office of the President.

III

Even if the tape recordings might once have been covered by a privilege, any such claim to continued secrecy has been waived by the extensive testimony, given with the President's consent, publicizing individual versions of the conversations. In his public statement of May 22, 1973, the President announced that "Executive privilege will not be invoked as to any testimony concerning possi-

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ble criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up." In accordance with that statement, Dean, Mitchell, Ehrlichman and Haldeman already have testified extensively before the Senate Committe and/or in other proceedings concerning the conversations specified in the subpoena. Haldeman even was allowed access to various tapes after he left government office and gave testimony based upon his listening to the tapes denied the grand jury. The President and his counsel themselves have made comments for publication upon the content of the conversations. Under familiar legal principles those disclosures waive any right to further confidentiality. Not even a President can be allowed to select some accounts of a conversation for public disclosure and then to frustrate further grand jury inquiries by withholding the best evidence of what actually took place.

## *ARGUMENT*

### Introduction

Our basic submission is that the President of the United States like the humblest citizen, has an enforceable legal duty not to withhold from the grand jury material evidence the production of which the Court determines to be in the public interest. The grand jury serves "the dual function of determining if there is probable cause to believe that a crime has been committed and of protecting citizens against unfounded criminal prosecutions." *Branzburg* v. *Hayes*, 408 U.S. 665, 686-87 (1972). . . . "Its adoption in our Constitution as the sole method for preferring charges in serious criminal cases shows the high place it held as an instrument of justice." *Costello* v. *United States*, 350 U.S. 359, 362 (1956).[3] Because of the grand jury's fundamental importance to the administration of justice, "the long standing principle that 'the public has a right to every man's evidence,' except for those persons protected by a constitutional, common law or statutory privilege . . . is particularly applicable to grand jury proceedings." *Branzburg* v. *Hayes*, 408 U.S. at 688.[4] See also. . . .

[3] The Fifth Amendment provides in relevant part:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury * * *."

[4] The Court in *Branzburg* quotes Jeremy Bentham's vivid illustration:

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The application of these principles to the President was recognized as early as 1807 in *United States* v. *Burr*, 25 Fed. Cas. 30 (No. 14, 692d) (C.C.D. Va. 1807). The decision was recently cited with apparent approval by the Supreme Court in *Branzburg* v. *Hayes*, 408 U.S. at 688-89 n. 26.

The decision in *United States* v. *Burr* conforms to two constitutional principles which history has put beyond dispute. *First*, even the highest executive officials are subject to the rule of law, which —as Chief Justice Marshall observed in *Marbury* v. *Madison*, 1 Cranch 137, 177 (1803)—"[i]t is, emphatically the province and duty" of the courts to declare. *Second*, the rights and obligations of the President and other high executive officers are defined and judicial orders entered on the premise that these officials will obey the law's explicit and particularized commands.

Against these settled principles counsel for the President claim an absolute Presidential prerogative to withhold material evidence from a grand jury merely upon the assertion that production is against the public interest. The only practical argument adduced for so dangerous a claim is that the effective functioning of the Presidency requires confidentiality for papers, memoranda and conversations. Our response is that the practical needs of the Presidency are fully met by the familiar rule of qualified executive privilege defined and administered by the courts. We show below that the separation of powers does not support the claim of unreviewable privilege, that there is no Presidential immunity from judicial orders requiring the production of evidence, and that the nine tapes lie outside the normal qualified executive privilege. Six limiting conditions frame the context for those legal propositions:

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Are men of the first rank and consideration—are men high in office—men whose time is not less valuable to the public than to themselves—are such men to be forced to quit their business, their functions, and what is more than all, their pleasure, at the beck of every idle or malicious adversary, to dance attendance upon every petty cause? Yes, as far as it is necessary, they and everybody . . . Were the Prince of Wales, the Archbishop of Canterbury, and the Lord High Chancellor, to be passing by in the same coach while a chimneysweeper and a barrow-woman were in dispute about a halfpennyworth of apples, and the chimney-sweeper or the barrow-woman were to think proper to call upon them for their evidence, could they refuse it? No, most certainly.

See 4 The Works of Jeremy Bentham 320-21 (Bowring ed. 1843). See also 8 Wigmore § 2192.

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1. The recordings are sought *by a grand jury* as necessary to its investigation of definable criminal conduct. There is no claim here of a right of the Legislative Branch—or of the Judiciary for that matter —to monitor the Executive's decision-making processes by rummaging through confidential files for debatable policy judgments.[5] Even farther afield are the interests of private litigants asserting private rights.

2. The allegations under investigation involve high Presidential assistants and criminal conduct in the Executive Offices. Such involvement is virtually unique. Because it is unlikely to recur, production of White House documents *in this investigation* will establish no precedent for recurrent grand jury investigations.

3. There is a demonstrated and particularized need for the recordings of the nine specific conversations covered by the subpoena. All are demonstrably material to the planning and scope of the alleged criminal conspiracy—as well as to possible perjury—and thus are essential to the grand jury's full discharge of its constitutional responsibilities. This circumstance constitutes still another guarantee that enforcing the subpoena would not set a precedent for prying or politically motivated inquiries even by a grand jury.

4. There is no particularized showing that the public interest would be injured by disclosing the relevant parts of the recordings to the grand jury. On the contrary, the confidentiality of these conversations already has been eliminated by the extensive public testimony given by principals, with the explicit approval of the President.

5. The public testimony about these conversations indicates that some of them may have been part of a criminal conspiracy to ob-

[5] Rejection of the claim of executive privilege in the present case does not require a decision upon any claim of executive privilege *vis-a-vis* the Congress. History provides a great variety of opinions on the relative rights of the Executive and the Congress. See generally Berger, *Executive Privilege v. Congressional Inquiry*, 12 U.C.L.A. L. Rev. 1043, 1078-98 (1956). The issue has never been submitted to the courts; at one time it was generally assumed that a claim of executive privilege *vis-a-vis* the Congress presented a nonjusticiable political question. See *e.g.*, L. Hand, The Bill of Rights 17-18 (1958). But see *Powell* v. *McCormack*, 395 U.S. 486 (1969). No one has ever suggested that an application for an order requiring the Executive Branch to produce evidence in the usual course of judicial or grand jury proceedings presents a nonjusticiable political question.

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struct justice. To the extent that the conversations do not concern the legitimate affairs of Government and the performance of the official duties and responsibilities of the President and his staff, they could not be protected by executive privilege.

6. The subpoena is directed to the President—admittedly a rare proceeding—only because the President took the unusual step of assuming sole personal custody of the recordings once the existence of the evidence was admitted. In the absence of this attempt on the part of the President or his attorneys to strengthen his hand in a constitutional confrontation, the Special Prosecutor and the grand jury could have pursued the more traditional course of seeking disclosure from a subordinate official.

The confluence of these six factors shapes the entire case. They put the President's claim outside the normal rule of executive privilege and drive counsel for the President to the extraordinary claim that the President has an absolute right to withhold material evidence from a grand jury merely by his own *ipse dixit* whenever he asserts that non-disclosure would be in the public interest and even though he has a personal and private interest in the question. The six factors also limit the issue the Court must decide so sharply that enforcement of the subpoena will set only a narrow precedent, albeit a precedent of historic importance in reaffirming the American constitutional tradition that no man is above the law.

## I

## The President Has an Enforceable Legal Duty to Produce Material Evidence for the Grand Jury Where He Fails to Show to the Satisfaction of the Court a Particularized Need for Secrecy

### A. *The Courts Have the Final Authority to Determine When Evidence in the Executive Branch Should be Produced in a Judicial Proceeding.*

In accordance with the uniform course of decisions, the claim of an absolute executive privilege based upon the separation of powers was rejected for the District of Columbia Circuit in *Committee for Nuclear Responsibility, Inc.* v. *Seaborg*, 463 F.2d 788 (1971). There, as here, counsel claimed that the Executive Branch's "inherent con-

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stitutional powers" include the right to determine conclusively what documents in the possession of the Executive Branch are subject to executive privilege. There, as here, the claim was premised on the contention that the separation of powers prevents the courts from ordering the production of such documents. The courts, however, rejected the claim that "executive absolutism [can] override the duty of the court to assure that an official had not exceeded his charter or flouted the legislative will." 463 F.2d at 793. The opinion goes on to state the rule binding in this Circuit in words foreshadowing the present case:

> [N]o executive official or agency can be given absolute authority to determine what documents in his possession may be considered by the court in its task. Otherwise the head of any executive department would have the power on his own say-so to cover up all evidence of fraud and corruption when a federal court or grand jury was investigating malfeasance in office, and this is not the law. 463 F.2d at 794.

The President's letter to the Chief Judge of this Court, dated July 25, 1973, declining to comply with the subpoena, argues: "It would be wholly inadmissible for the President to seek to compel some particular action by the courts. It is equally inadmissible for the courts to seek to compel some particular action from the President." These assertions mistake the true nature of our constitutional system. The President focuses on the "separation" of functions in our tripartite system of government, and in so doing misses a crucial point: the respective "powers" of each branch frequently interact. Interaction between branches is an essential element of our constitutional arrangement, and one branch frequently requires action by another when it is exercising its constitutional powers. Thus, the Legislative Branch has the power to make the laws. Its enactments bind the Judiciary—unless unconstitutional—not only in the decision of cases and controversies, but in the very procedure through which the Judiciary transacts its business.[6] Congress, in scores of statutes, regularly imposes legal duties upon the President. The very essence of his function is the legal duty to carry out congressional mandates.[7] Indeed, the President, contrary to his letter, may require

[6] See, *e.g.*, 28 U.S.C. 2, 44(c), 45, 144, 331, 332, 333, 455, 1731-1745, 1826, 2254(b), 2284(4), 2403; 18 U.S.C. 2519, 6003(a), 6005(a).

[7] Article II, Section 3, of the Constitution provides in relevant part:

> [H]e [the President] shall take Care that the Laws be faithfully executed. . . .

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"some particular action by the courts." The courts have a legal duty to give—and do give—effect to executive orders.[8] Where the President or an appropriate official institutes a legal action in his own name or that of the United States, a judge is compelled to grant the relief requested if in accordance with law; should he fail, the appellate court will mandate the performance of the obligation.

For more than a century and a half, all three branches have acknowledged that it is the constitutional function of the courts to interpret the laws, see *Marbury* v. *Madison, supra,* and to issue orders directing the cessation of legal wrongs or the performance of legal duties. We enjoy a constitutional government of laws and not of men because each branch has acknowledged its duties under the functioning of the others. The judicial power is no less potent when the rights and duties of executive officials are at issue.

"Checks and balances were established in order that this should be a 'government of laws and not of men.' . . . The doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power." *Myers* v. *United States,* 272 U.S. 52, 292-93 (1926) (Brandeis, J., dissenting). As Mr. Justice Jackson explained in *Youngstown Sheet & Tube Co.* v. *Sawyer,* 343 U.S. 579, 635 (1952) (concurring opinion):

> While the Constitution diffuses power the better to secure liberty, it also contemplates that practice will integrate the dispersed powers into a workable government. It enjoins upon its branches separateness but interdependence, autonomy but reciprocity.

The doctrine stated in the *Seaborg* case is but a specific application of two historic constitutional principles:

(1) The highest executive officials, like all citizens, are subject to the rule of law and may be required to comply with their legal obligations.

(2) "It is, emphatically, the province and duty of the judicial department to say, what the law is." *Marbury* v. *Madison, supra.*

From the earliest days of the Republic the courts have issued orders requiring executive officials to comply with the Constitution

[8] See, *e.g., Environmental Protection Agency* v. *Mink,* 410 U.S. 73 (1973) (security classification).

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and laws as judicially interpreted even when the defendant was acting under explicit orders of the President. *E.g.*, *Youngstown Sheet & Tube Co.* v. *Sawyer* (steel seizure case), *supra; United States* v. *United States District Court*, 407 U.S. 297 (1972) (power of the President, acting through the Attorney General, to order domestic national security wiretaps without judicial warrants); *State Highway Commission* v. *Volpe*, —— F.2d —— (No. 72-1512) (8th Cir. April 2, 1973) (highway fund impoundment); cf. *Marbury* v. *Madison, supra* (court with jurisdiction can issue mandamus).[9]

In applying the fundamental principle of our republican form of government that the Executive is not above the law, the courts, as in *Seaborg*, consistently have determined for themselves what evidence is appropriately subject to a claim of privilege. In *United States* v. *Reynolds*, 345 U.S. 1 (1953), the Executive Branch argued that "department heads have power to withhold any documents in their custody from judicial view if they deem it to be in the public interest," 345 U.S. at 6 (footnote omitted),—a position strikingly similar to the one now advanced by the President. The case involved a Tort Claims Act suit arising out of the crash of a B-29 bomber testing secret electronic equipment. The plaintiffs sought discovery of the Air Force's official accident investigation report and the statements

[9] *Youngstown Sheet & Tube Co.* v. *Sawyer* is perhaps the most noted instance where the Supreme Court has reviewed the assertion of Presidential power. President Truman, concluding that a threatened work stoppage at the Nation's steel mills during the Korean War "would immediately jeopardize and imperil our national defense," directed the Secretary of Commerce to take possession of and operate specified steel facilities. Executive Order No. 10340 (April 8, 1952). The President asserted that he "was acting within the aggregate of his constitutional powers as the Nation's Chief Executive and the Commander in Chief of the Armed Forces of the United States." 343 U.S. at 582. District Judge Holtzoff denied a temporary restraining order on the ground that what was involved was the action of the President and that the courts could not enjoin Presidential action. Judge Pine, however, granted a preliminary injunction and the Supreme Court upheld him. In doing so, there was no doubt expressed that the Court could adjudicate the claim that the President had no constitutional power to issue the Executive Order. In his concurring opinion, Justice Jackson expressed the fundamental principle underlying the Court's decision:

> With all its defects, delays and inconveniences, men have discovered no technique for long preserving free government except that the Executive be under the law. 343 U.S. at 655.

See also *Korematsu* v. *United States*, 323 U.S. 214 (1944), in which the Supreme Court reviewed and upheld the President's assertion of wartime powers.

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of the surviving crew members. Although the Supreme Court agreed that an evidentiary privilege covers military secrets, 345 U.S. at 6-7, 11, it held "[t]he court itself must determine whether the circumstances are appropriate for the claim of privilege. . . . Judicial control over the evidence in a case cannot be abdicated to the caprice of executive officers." 345 U.S. at 8, 9-10 (footnote omitted). See also. . . .

The governing principle is aptly summarized by Wigmore:

> A court which abdicates its inherent function of determining the facts upon which the admissibility of evidence depends will furnish to bureaucratic officials too ample opportunities for abusing the privilege. The lawful limits of the privilege are extensible beyond any control if its applicability is left to the determination of the very official whose interest it may be to shield a wrongdoing under the privilege. Both principle and policy demand that the determination of the privilege shall be for the court. 8 Wigmore § 2379, at 809-10.

There is nothing to the contrary in the cases giving the Government a "choice" between producing evidence and dropping a criminal prosecution or losing a civil action.[10] Clearly, despite the President's apparent implication (Brief in Opposition 604, 606), those decisions do not mark the limits of judicial power. In those particular instances the requirements of justice could be satisfied without compelling production of evidence over an executive claim of privilege if the Government preferred to lose the suit to which it was a party. See generally Rule 16(g), Federal Rules of Criminal Procedure; Rule 37(b), Federal Rules of Civil Procedure. In the instance at bar the requirements of justice cannot be served in that fashion. Counsel for the President even avoid making the choice by expressing the hope that the investigation can be pushed forward with other evidence,

[10] See cases cited in Brief in Opposition 604. To the extent there is such a choice in the Executive Branch, it is committed by law to the Attorney General, not to the President. Under 28 U.S.C. 535, the Attorney General is given the responsibility to "investigate any violation of title 18 involving Government officers. . . ." Under U.S.C. 533, he is to appoint officials to "detect and prosecute crimes against the United States." Pursuant to 28 U.S.C. 510 and 515 the Attorney General has now delegated these powers and responsibilities to the Special Prosecutor for this investigation and prosecution, including the authority "to contest the assertion of 'Executive Privilege'. . . ." See 38 Fed. Reg. 14,688 (June 4, 1973).

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thus attempting to wash their hands of the risk that any resulting prosecution might have to be abandoned if exculpatory evidence were being withheld (Brief in Opposition 604-605). Nor can it be argued that termination of this grand jury investigation would be a tolerable or just price to pay to allow the President the "choice" of refusing to produce the evidence. The seriousness of the putative offenses and the high offices held by those possibly implicated preclude that solution.

There is not the slightest basis for doubting the power of a court to order the production of evidence from the Executive Branch when justice so requires. Last Term's Supreme Court decision *Environmental Protection Agency* v. *Mink*, 410 U.S. 73 (1973), clearly establishes the proposition that the constitutional separation of powers does not give the Executive any constitutional immunity from judicial orders for the production of evidence. The plaintiffs had sought access under the Freedom of Information Act to a report prepared for the President by the Undersecretaries Committee of the National Security Council on the proposed underground nuclear test on Amchitka Island. The Government opposed the request partly upon the ground that the documents were exempt from disclosure as "interagency memorandums or letters,"[11] arguing that the need to avoid disclosure of communications with the President was "particularly important." Brief for the Petitioners 39-40. Nevertheless, the Supreme Court remanded for a judicial determination of the claim of privilege; the opinion states explicitly that in opposing disclosure the Government carried the burden of establishing "to the satisfaction of the District Court" that the documents were exempt from disclosure. 410 U.S. at 93. Significantly, the Freedom of Information Act expressly provides that "[i]n the event of noncompliance with the order of the court" to disclose material found unprivileged, the court may punish the responsible executive officer "for contempt." 5 U.S.C. 552(a)(3). Neither in *Mink* nor in any other decision has any doubt been expressed about the constitutional power of the courts to enter mandatory orders for the production of evidence.

[11] Although the Court dealt within the framework of the Freedom of Information Act, 5 U.S.C. 552(b)(5), it recognized that Congress simply had incorporated the common law executive privilege. 410 U.S. at 85-89. The exemption was defined with specific reference to the court decisions that had developed the privilege.

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Other precedents confirm the existence of judicial power to require the production of evidence by executive officials when the Court determines the evidence to be material and unprivileged. *United States* v. *Burr*, 25 Fed. Cas. 30 (No. 14,692d) (C.C.D. Va. 1807), is an early and clear example involving a grand jury. In *Bowman Dairy Co.* v. *United States*, 341 U.S. 214, 221 (1951), the Supreme Court treated contempt as a proper sanction against government counsel if he refused to obey a subpoena for the production of documents after the court rejected a claim of privilege. Similarly, while holding that an FBI Agent could not properly be held in contempt for refusing to obey a subpoena to produce information for use in a state prisoner's habeas corpus action without permission from the Attorney General, the Court implicitly assumed, and Justice Frankfurter explicitly stated in his concurring opinion, that the Attorney General himself would be subject to compulsory process. *United States ex. rel. Touhy* v. *Ragen*, 340 U.S. 462, 465-66, 472 (1951). Thus, Professor Charles A. Wright, after explaining that—

> The determination whether to allow the claim of [executive] privilege is then for the court . . .

goes on to say that—

> In private litigation refusal of a government officer to comply with a court order overruling a claim of executive privilege and ordering disclosure could lead to conviction for contempt. . . .

8 Wright and Miller, Federal Practice and Procedure § 2019, at 171-72 (1970) (footnotes omitted). For cases in this Circuit in which the court has assumed the existence of power in private litigation to enforce a subpoena for documents in the Executive Branch over a claim of privilege, see *Westinghouse Electric Corp.* v. *City of Burlington*, 351 F.2d 762 (D.C. Cir. 1965); *Machin* v. *Zuckert*, *supra*; *Boeing Airplane Co.* v. *Coggeshall*, 280 F.2d 654 (D.C. Cir. 1960).[12]

[12] Counsel's emphasis upon the absence of judicial authority holding an executive officer in contempt is familiar rhetoric. We could assert with equal accuracy that there is no authority whatever excusing an executive official from complying with a valid subpoena after the claim of executive privilege has been determined adversely by the courts. The explanation seems to be that throughout our history, the Executive Branch, though occasionally disappointed with judicial rulings on the law, has complied with the court's decision and not pressed the matter to contempt. This precedent was set in the *Burr* case by President Jefferson, of

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The present case underscores the wisdom of the rule vesting power in the courts to pass upon claims of executive privilege and to compel the production of material evidence. The President cannot be a proper judge of whether the greater public interest lies in giving the evidence to the grand jury or withholding it. His highest and closest aides and associates have been accused in sworn testimony. The President is bound to them not only by the natural emotions of loyalty and gratitude, but also by the risk that his present political power and future place in history will be linked to the effect of disclosure to the grand jury on them. The evidence on the tapes also may be material to public accusations against the President himself—a question to which he can hardly be indifferent. We call attention to these facts without disrespect to the President or his office. Even if the President, by extraordinary act of conscience, could judge impartially the relative public advantages of secrecy and disclosure without regard to the consequences for himself or his associates, confidence in the integrity and impartiality of the legal system as between the high and lowly still would be impaired through violation of the ancient precept that no man shall be the judge of his own cause.[13]

B. *The President is Not Immune from Orders Requiring the Production of Material Evidence.*

There is not the slightest basis for counsel's effort to except the President from the usual rule that claims of executive privilege are subject to judicial determination. The President is not above the law. The basic policies are the same as those discussed above.

*United States* v. *Burr*, 25 Fed. Cas. 30 (14,692d) (C.C.D. Va. 1807), is clear authority for the issuance of a subpoena *duces tecum* in appropriate cases to the person who is President. Although Chief Justice Marshall recognized that the power was one to be exercised with attention both to the convenience of the President in performing his arduous duties and to the possibility that the public interest might preclude coercing particular disclosures, he utterly rejected

course, and has been regarded as part of our fine tradition of respect for the authority of the courts.

[13] Compare *Ward* v. *Village of Monroeville*, 409 U.S. 57 (1972); *Mayberry* v. *Pennsylvania*, 400 U.S. 455 (1971); *Offutt* v. *United States*, 348 U.S. 11 (1954).

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any suggestion that the President, like the King of England, is absolutely immune from judicial process:

> Although he [the King] may, perhaps, give testimony, it is said to be incompatible with his dignity to appear under the process of the court. Of the many points of difference which exist between the first magistrate in England and the first magistrate of the United States, in respect to the personal dignity conferred on them by the constitutions of their respective nations, the court will only select and mention two. It is a principle of the English constitution that the king can do no wrong, that no blame can be imputed to him, that he cannot be named in debate. By the constitution of the United States, the president, as well as any other officer of the government, may be impeached, and may be removed from office on high crimes and misdemeanors. By the constitution of Great Britain, the crown is hereditary, and the monarch can never be a subject. By that of the United States, the president is elected from the mass of the people, and, on the expiration of the time for which he is elected, returns to the mass of the people again. How essentially this difference of circumstances must vary the policy of the laws of the two countries, in reference to the personal dignity of the executive chief, will be perceived by every person. In this respect the first magistrate of the Union may more properly be likened to the first magistrate of a state; at any rate, under the former Confederation; and it is not known ever to have been doubted, but that the chief magistrate of a state might be served with a subpoena ad testificandum. 25 Fed. Cas. at 34.

The decision was recently noted with apparent approval in *Branzburg* v. *Hayes*, 408 U.S. at 688 n. 26. Furthermore, only two weeks ago, Judge Jones of this Court ordered the custodian of the records of the White House, who had claimed executive privilege at the direction of the President, to produce files for *in camera* inspection. *Nader* v. *Butz*, D.D.C. Civil No. 148-72 (August 1, 1973). See also. . . .[14]

[14] The President refers to the Presidential Libraries Act of 1955, 44 U.S.C. 2107, 2108. That statute, of course, is inapplicable, since there has been no effort to donate the tapes sought by the grand jury to a Presidential library under a condition of confidentiality and there is no occasion to consider whether that Act creates a statutory privilege as against a grand jury subpoena.

Furthermore, the assumption that the materials being sought by the grand jury "are the property of the President" (Brief in Opposition 598-599) is unfounded. Public testimony has established that the tape recordings were made by agents

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The rule in *United States* v. *Burr* is consistent with contemporary evidence of the intent of the Framers. Contrasted with the explicit privileges in Article I, no comparable privileges or immunities were specified for the President or Executive Branch in Article II, even though they had been commonplace for the King. The Founding Fathers were keenly aware of the dangers of Executive power. Even James Wilson, who favored a strong executive, rejected "the Prerogatives of the British Monarch as a proper guide in defining the Executive powers. . . ."[15] He stated at the Pennsylvania Ratification Convention:

> The executive power is better to be trusted when it has no screen. Sir, we have a responsibility in the person of our President; he cannot act improperly, and hide either his negligence or inattention; he cannot roll upon any other person the weight of his criminality. . . . Add to all this, that officer is placed high, and is possessed of power far from being contemptible; yet not a *single privilege* is annexed to his character. . . .[16]

One might infer quite plausibly from the specific grant of official privileges to Congress that no other constitutional immunity from normal legal obligations was intended for government officials or papers. Indeed, Charles Pinckney stated in the Senate on March 5, 1800:

> They [the Framers] well knew how oppressively the power of undefined privileges had been exercised in Great Britain, and were determined no such authority should ever be exercised here. . . .
>
> * * * *
>
> No privilege of this kind was intended for your Executive, nor any except that which I have mentioned for your Legislature.[17]

We do not press the argument to this extreme, for the law of evidence has come to recognize a qualified executive privilege defined

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of the United States Secret Service using government equipment in public buildings. The President can lay no claim to private ownership of materials furnished, produced, and stored by public officials using public money.

[15] 1 Farrand, *Records of the Federal Convention of 1787*, at 65-66 (1911). See also 4 Elliot's Debates 108-09 (2d ed. 1836) (remarks of Iredell at the North Carolina Ratification Convention).

[16] 2 Elliot's Debates 480 (2d ed. 1836).

[17] 3 Farrand, Records of the Federal Convention of 1787, at 384-385 (1911).

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and applied by the courts.[18] The teaching of history is nonetheless persuasive against the claim of an absolute Presidential prerogative.

Interestingly, counsel for the President concede that they do "not question the power of the court to issue a subpoena to the President" (Brief in Opposition 588-589), but then they turn about and assert that the power to issue the command "does not impose on the Executive any concurrent obligation to disclose that information" (*Ibid.*). The inconsistency is obvious. A subpoena is a judicial command. If it is valid, compliance is a legal duty. Nothing in the separation of powers principle discussed above, or in the President's status as Chief Executive, justifies a contrary conclusion.[19]

It is true that custom dictates that legal process should not be addressed to the President of the United States whenever a Cabinet member or lesser official is available, even though a defendant is acting upon direct order of the President. *E.g.*, *Youngstown Sheet & Tube Co.* v. *Sawyer*, *supra*. We would have followed that course here if the President had been content to leave the tapes under the physical control of his assistant for administration and the Director of the Technical Security Division of the Secret Service (S. Tr. 4145-70). In that event, a subpoena addressed to either of these officials would have been sufficient.[20] In fact, it became necessary to seek this evi-

[18] The courts never have decided whether executive privilege derives implicitly from the constitutional separation of powers, or whether it is merely a common law evidentiary privilege. See, *e.g.*, *United States* v. *Reynolds*, 345 U.S. at 6; *Committee for Nuclear Responsibility, Inc.* v. *Seaborg*, 463 F.2d at 793-94. Professor Charles Alan Wright has observed that "[t]he commentators have not found much substance in the constitutional argument, based, as it is, on separation of powers." 8 Wright and Miller, Federal Practice and Procedure § 2019, at 175 n. 44 (1970 ed.).

[19] Professor Wigmore has stated:

> The public . . . has a right to every man's evidence . . . Is there any reason why this right should suffer an exception when the desired knowledge is in the possession of a person occupying at the moment the office of *chief executive* of a state?
>
> There is no reason at all. 8 Wigmore § 2370, at 748.

[20] Chief Justice Marshall recognized as much in *Marbury* v. *Madison*, when he stated: "It is not by the office of the person to whom the writ is directed, but the nature of the thing to be done, that the propriety or impropriety of issuing a *mandamus* is to be determined." 1 Cranch at 170. Similarly, where the issue is the enforcement of a subpoena, what matters is whether the evidence is lawfully producible, and the office occupied by its possessor is of no decisive consequence.

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dence from the President only because he elected to assume personal control. To allow this device to render the tapes immune from ordinary legal process would exalt form over substance and set a President above the law, contrary to our firm constitutional tradition. This tradition was summed up by the Supreme Court in *United States* v. *Lee*, 106 U.S. 196, 220 (1882):

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance, with impunity. All the officers of the Government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office, participates in its functions, is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

The argument that the President is immune from process rests upon a misreading of *Mississippi* v. *Johnson*, 4 Wall. 475 (1866).[21] In that case the State of Mississippi sought leave to file an original bill to enjoin President Johnson from enforcing the Reconstruction Acts, which provided for reconstitution of the governments of the erstwhile Confederacy. Because the President was named as a defendant in the bill, the Supreme Court heard argument upon the question of jurisdiction before the bill was filed, instead of reserving the question to a later stage.[22] As the President states (Brief in Opposition 590), Attorney General Stanbery did indeed argue that the President is "above the process of any court." 4 Wall. at 484. In order to make the claim, Attorney General Stanbery was forced to challenge Chief Justice Marshall's differentiation between the President and a royal monarch by asserting:

> . . . I deny that there is a particle less dignity belonging to the office of President than to the office of King of Great Britain or of any other potentate on the face of the earth. He represents the majesty of the law

[21] Scattered district court opinions seem to have accepted that argument, at least where discretionary executive powers were at issue. See, *e.g.*, *National Association of Internal Revenue Employees* v. *Nixon*, 349 F. Supp. 18, 21 (D.D.C. 1972) (appeal pending D.C. Cir.); *Reese* v. *Nixon*, 347 F. Supp. 314, 316-17 (C.D. Cal. 1972).

[22] Fairman, *Reconstruction and Reunion 1864-88*, 6 History of the Supreme Court of the United States 379-80, 436-37 (1971).

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> and of the people as fully and as essentially, and with the same dignity, as does any absolute monarch or the head of any independent government in the world. 4 Wall. at 484.

Faithful to the tradition that in the United States no man and no office is above the law, the Supreme Court emphatically refused to accept the Attorney General's claim of royal immunity for the President of the United States:

> We shall limit our inquiry to the question presented by the objection [that the bill seeks to enjoin the President in the performance of his duties as President], *without expressing any opinion on the broader issues discussed in argument, whether, in any case, the President of the United States may be required, by the process of this court, to perform a purely ministerial act under a positive law, or may be held amenable, in any case, otherwise than by impeachment for crime.* 4 Wall. at 498 (emphasis added).

Rather, the Court held that it had "no jurisdiction of a bill to enjoin the President in the performance of his official duties. . . ." 4 Wall. at 501. The Court distinguished the power of the courts to require the President to perform a single ministerial act from an attempt to control the exercise of his broad constitutional discretion:

> In each of these cases [involving ministerial duties] nothing was left to discretion. There was no room for the exercise of judgment. The law required the performance of a single specific act; and that performance, it was held, might be required by mandamus.
>
> Very different is the duty of the President in the exercise of the power to see that the laws are faithfully executed, and among these laws the acts named in the bill. . . . The duty thus imposed on the President is in no just sense ministerial. It is purely executive and political. 4 Wall. at 499.

That case arose shortly after the Civil War, when there was a bitter political conflict over the proper national policy to be followed in dealing with the secessionist states. In declining to exercise its original jurisdiction over an equitable suit brought by a state seeking to enjoin the President from enforcing congressional policy, the Court had no occasion to decide that *no* federal court could ever issue *any* order to the President, and it did not do so.

Subsequently, the Court declined jurisdiction of similar bills naming the Secretary of War or a military commander as respondent.

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*Georgia* v. *Stanton*, 6 Wall. 50 (1867). Their disposition is further proof that it was the character of the question presented and not the identity of the respondent that determined the issue in *Mississippi* v. *Johnson*. In still later cases, the Supreme Court has recognized explicitly that that decision did not turn on the fact that the respondent was the President, but was an early expression of the nonjusticiability of "political questions." Mr. Justice Harlan has cited the decision as an example of instances where the Supreme Court has refused "to entertain . . . original actions . . . that seek to embroil this tribunal in 'political questions'." *Ohio* v. *Wyandotte Chemical Corp.*, 401 U.S. 493, 496 (1971). See also. . . . In this light, more recent cases[23] have indicated that the President can be named a defendant in an action when that course would be necessary to the granting of effective relief. See Rule 19(a), Federal Rules of Civil Procedure.

A central theme of the argument for the President is that the President has "the power and thus the privilege to withhold information" (Brief in Opposition 586). To link physical power with legal privilege runs contrary to our entire constitutional tradition. It might as well be said that a Secretary of State, acting upon orders of the President, has "the power and thus the privilege" to withhold a signed commission, contrary to the ruling in *Marbury* v. *Madison*, *supra*; or that a Postmaster General, acting upon instructions of the President, has "the power and thus the privilege" to refuse to pay money owed pursuant to a contract, contrary to the decision in *Kendall* v. *Stokes*, 12 Pet. 524 (1838); or that the President has "the power and thus the privilege" to seize industrial property in a wartime labor dispute, contrary to *Youngstown Sheet & Tube Co.* v. *Sawyer*, *supra*; or to conduct warrantless electronic surveillance, contrary to the Fourth Amendment as interpreted in *United States* v. *United States District Court*, *supra*.

The Court never has allowed doubt about its physical power to enforce its commands against the Executive Branch to deter the issuance of appropriate orders.[24] Happily, the possession of the naked

[23] See p. 625, *supra*.

[24] Counsel for the President place great emphasis (Brief in Opposition 608-609) upon the portion of the opinion in *Mississippi* v. *Johnson* suggesting that the bill was beyond the Court's jurisdiction because the Court could not, in the final analysis, enforce its will against the President. 4 Wall, at 500-01. We think those passages must be read as part of the explanation of the impossibility of dictating to the President how he was to perform a wide range of discretionary

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physical power to frustrate the Court has never led the Executive Branch to disregard a judicial determination of legal rights and obligations.

The irrelevance of physical power to the entry of orders enforcing legal obligations is reflected in many contexts. For example, in *Glidden* v. *Zdanok*, 370 U.S. 530 (1962), the Supreme Court rejected the argument that a money claim against the United States did not present a justiciable issue because the courts were without power to force execution of a judgment against the United States: "If this Court may rely on the good faith of state governments or other public bodies to respond to its judgments, there seems to be no sound reason why the Court of Claims may not rely on the good faith of the United States." 370 U.S. at 571. See also. . . .

The crucial jurisdictional issue is not the physical power to secure compliance with judicial orders, but the ability to resolve authoritatively the conflicting claims of legal rights and obligations. See *Baker* v. *Carr*, 369 U.S. 186, 208-37 (1962). The effect of a President's physical power to disobey a court order is wholly speculative at this juncture, moreover, and undoubtedly will remain so. There is no reason to believe that the President would disregard a final binding order fixing legal responsibilities. Certainly, the contention that the Court could not force him into prison does not strip the Court, as opposing counsel mistakenly argue, of the jurisdiction to order compliance with a valid subpoena.[25]

Of course, the judiciary must be circumspect in issuing process against the President to avoid interference with the proper discharge of his executive functions. For example, it might not be proper in the absence of strong necessity, to require the President to appear personally before a grand jury if personal appearance would interfere with his schedule or the performance of his duties. Similarly, the

functions; otherwise, they run contrary to the entire tradition of our constitutional law.

[25] It should be noted, of course, that a contempt citation does not lead automatically to incarceration. Apart from the sanction of imprisonment to enforce a court order or to punish its violation, the courts may be content merely to cite the contemnor for his recalcitrance or to impose a daily coercive fine pending compliance or to assess a penal fine or to strike the name of the contemnor from the roll of attorneys. None of these sanctions involves exercise of physical power over the contemnor's person or any interference with his other activities.

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courts should not saddle the Executive with requests that are administratively burdensome. Compare *United States* v. *Burr*, 25 Fed. Cas. 30, 34 (No. 14,692d) (C.C.D. Va. 1807). Nor may the courts review, oversee or direct the performance of the President's constitutional duties which implicate "political questions." See *Mississippi* v. *Johnson*, 4 Wall. at 499-501; *Marbury* v. *Madison*, 1 Cranch at 165-66, 170.

But the question here is very different. We are concerned with the obligation of the President, as a citizen of the United States, to co-operate with a criminal investigation of the grand jury by performing the solely ministerial task of producing specified recordings and documentary evidence. It should be emphasized that compliance with the subpoena will not interfere with or burden in any direct or material way the proper performance of the duties and responsibilities of the President or the Executive Office. The President is not summoned in person.[26] Nor is the Court asked either to command or forbid the performance of any discretionary functions.

Assertion of a personal prerogative to frustrate the practical performance of an important governmental function is particularly empty here, where the Chief Executive is refusing to cooperate in a grand jury investigation. Although its proceedings are conducted by officers of the Executive Branch and are subject to the supervision of the courts, the grand jury's "authority is derived from none of the three basic divisions of our government, but rather directly from the people themselves." *In re April 1956 Term Grand Jury*, 239 F.2d 263, 269 (7th Cir. 1956). As the Supreme Court has noted, grand jurors "are not appointed for the prosecutor or for the court; they are appointed for the government and for the people. . . ." *Hale* v. *Henkel*, 201 U.S. 43, 61 (1906).

Thus, it is a false conflict to see the present controversy as a struggle between the powers of the Judiciary and the prerogatives of the President. Rather, what is involved is the President's refusal to respond to a demand from the people, speaking through their organ, the grand jury. Unlike a monarch, the President is not the Sovereign. As Chief Justice John Jay noted, "Sovereignty is the right to govern.

[26] The Order to Show Cause as well as the subpoena are directed to "Richard M. Nixon *or any subordinate officer*" whom Mr. Nixon may designate as having custody of the tape recordings and other documents.

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. . . [H]ere it rests with the people; . . . our governors are the agents of the people." *Chisholm* v. *Georgia*, 2 Dall. 419, 471 (1793). This Court is merely called upon to vindicate the rule of law and to direct compliance with the duty owed by every citizen, including the President—the duty to supply evidence to the grand jury when in accordance with law.

## II

## The Tape Recordings Lie Outside the Normal Executive Privilege for Confidential Communications

In showing that the President has no absolute right to withhold evidence merely on his own say-so, we noted the familiar rule evidence that there are circumstances in which a claim of executive privilege, based upon a particularized showing of a public interest in secrecy greater than the need for the evidence, should be sustained by the courts.[27] Counsel for the President, although they assert that conversations in the Executive Office must be kept confidential to preserve the vigor and candor of the deliberative processes of government in the future, pitch their entire case upon the claim of absolute right. Having answered that claim, we might appropriately end our brief without elaborating the reasons for concluding that the tapes listed in the subpoena are not protected by a generalized claim of executive privilege, as normally understood, in this grand jury investigation.[28] Because of the public importance of the case,

[27] See pp. 613-614, *supra*.

[28] We use the term "generalized claim of executive privilege" to cover claims to privilege based on an asserted interest in the confidentiality of communications within the Executive Branch as distinguished from more specific privileges sometimes linked under the same term.

Thus, the courts also have recognized a specific privilege for "state secrets," covering information bearing on international relations, military affairs and the national security. See, *e.g.*, *United States* v. *Reynolds*, 345 U.S. at 6-7; *United States* v. *Curtiss-Wright Export Corp.*, 299 U.S. 304, 320-21 (1936); 8 Wigmore § 2378. There is also a privilege for "investigative files," including information relating to confidential informants. See, *e.g.*, *Alderman* v. *United States*, 394 U.S. 165, 184-85 (1969); *Roviaro* v. *United States*, 353 U.S. 53 (1957); *Machin* v. *Zuckert*, 316 F.2d at 339; 8 Wigmore §§ 2874-77; cf. *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462.

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however, we go on to show that the recognized privilege would be inapplicable even if it were claimed.

A. *A Claim of Executive Privilege Must Be Resolved by the Court by Weighing the Need for the Evidence Against Any Government Interest in Secrecy.*

Three basic principles furnish important guidance in considering how a claim of executive privilege for confidential communications, if asserted, would apply to the present case.

1. The privilege must be strictly construed. Any evidentiary privilege is "an obstacle to the administration of justice." 8 Wigmore § 2192, at 73. Professor Wigmore has termed all privileges "so many derogations from [the] positive general rule" that the public has a right to every man's evidence. *Id.*, at 70. Accordingly, a privilege must be confined to the narrowest limits justified by its underlying policies.[29] "To hold otherwise would be to invite gratuitous injury to citizens for little if any public purpose." *Doe* v. *McMillan*, —— U.S. ——, ——, 93 S. Ct. 2018, 2027 (1973). Such strictness in application of executive privilege conforms to the ideas of the Founding Fathers, who were keenly aware of the dangers of Executive secrecy.[30]

2. Whether particular documents or other materials are privileged is *for judicial determination*—upon the extrinsic evidence if sufficient, but otherwise upon *in camera* inspection. "[A] complete abandonment of judicial control would lead to intolerable abuses." *United States* v. *Reynolds*, 345 U.S. at 8. See also. . . .

3. It is a "settled rule" that "the court must balance the moving party's need for the documents in the litigation against the reasons which are asserted in defending confidentiality." *Committee for*

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The President has not identified any of the conversations described in the subpoena as containing state secrets, and, clearly, the privilege for investigatory files compiled for law enforcement purposes is inapplicable.

The courts never have decided whether executive privilege stems implicitly from the separation of powers or whether it is merely a common law evidentiary privilege. See note 18, *supra*.

[29] See 8 Wigmore § 2192, at 73; Morgan, Foreword to ALI Model Code of Evidence 7 (1942).

[30] For a discussion of the intent of the Framers, see pp. 627-628 *supra*.

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*Nuclear Responsibility, Inc.* v. *Seaborg*, 463 F.2d at 791. See also . . . .[31]

B. *The Executive Privilege Based Upon a Need for Candor in Governmental Deliberations Does Not Apply Where There is Reason to Believe That the Discussions May Have Involved Criminal Wrongdoing.*

The President makes no showing that production of the tapes would disclose to the grand jury "military secrets" or other state secrets damaging to the national security.[32] The only privilege remotely pertinent to the present case is the qualified privilege which attaches to "intra-governmental documents reflecting advisory opinions, recommendations and deliberations comprising part of a process by which governmental decisions and policies are formulated." *Carl Zeiss Stiftung* v. *V.E.B. Carl Zeiss, Jena*, 40 F.R.D. at 324; see also. . . . It is based on "two important policy considerations . . .: encouraging full and candid intra-agency discussion, and shielding from disclosure the mental processes of executive and administrative officers." *International Paper Co.* v. *Federal Power Commission*, 438 F.2d 1349, 1358-59 (2d Cir.), cert. denied, 404 U.S. 827 (1971); *Carl Zeiss Stiftung* v. *V.E.B. Carl Zeiss, Jena*, 40 F.R.D. at 324-26.

These reasons for according a measure of confidentiality pale to insignificance when, as in the present case, there is reason to believe that the deliberations in the Executive Offices were tainted by criminal wrongdoing. The interest in free discussion by government officials cannot outweigh the interest in the integrity of government itself. The veil of confidentiality should not be lifted upon sheer speculation, but it cannot be used as a cloak when there is substantial

[31] Professor Wright has himself observed:

> Applying a process of this kind, though not always so clearly articulated, courts in many cases have sustained claims of executive privilege. But in other cases, in which the litigant's need for the information has seemed to outweigh the government's interest in secrecy, the claim of privilege has been overruled and disclosure has been ordered.

8 Wright and Miller, Federal Practice and Procedure, §§ 2019, at 168-69 (1970).

[32] In a case in which it appeared that specific portion of a document contained such material, those portions could be excised from the copy put into evidence.

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reason to believe that serious criminal wrongdoing may have occurred.

According to the testimony of John W. Dean, many of the conversations in which he participated were part and parcel of a criminal conspiracy to obstruct justice by preventing the truth from coming out about the additional participants in the original conspiracy to break into and wiretap the offices of the Democratic National Committee. He has testified that in the presence of H.R. Haldeman he told the President on September 15, 1972, that "all [Dean] had been able to do was to contain the case and assist in keeping it out of the White House." Dean also told the President that he "could make no assurances that the day would not come when this matter would start to unravel." The President allegedly congratulated him on the "good job" he was doing on that task. (S. Tr. 2229-30). Dean also has testified that on March 13, 1973, the President told him that the President had approved executive clemency for Hunt and that there would be no problem in raising $1 million to buy the Watergate defendants' silence (S. Tr. 2324). In addition, there is uncontradicted testimony that the President was briefed on Watergate on June 20, 1972, three days after the arrests, by Haldeman, Ehrlichman and Mitchell, his closest political advisors (S. Tr. 5924, 3407-08). If these three told the President all they allegedly knew, the President would have been aware of details of the nascent cover-up.

It is true, of course, that other testimony indicates that the conversations did not include direct evidence of criminal misconduct. While this is not the time or place to judge credibility, Dean's testimony cannot be dismissed out of hand. In fact, Haldeman has confirmed many of the details of the meetings at which both he and Dean were present. The opposite conclusions he draws are based upon a different interpretation and different recollection of some of the details. It is precisely in this type of situation that recordings of the conversations are important either to confirm or dispel the inferences of criminal misconduct.

In earlier cases it has been squarely held that the protection afforded by executive privilege does not extend beyond the transaction of legitimate official activities so as to protect conversations that constitute evidence of official misconduct. See, *e.g.*, *Rosee* v. *Chicago Board of Trade*, 36 F.R.D. 684, 690 (N.D. Ill. 1965); *United*

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*States* v. *Proctor & Gamble Co.*, 25 F.R.D. 485, 490 (D. N.J. 1960). When the processes which are fostered and protected by a veil of secrecy are abused or subverted, the reasons for secrecy no longer exist and the privilege is lifted. See *United States* v. *Procter & Gamble Co.*, 356 U.S. 677, 684 (1958) (grand jury minutes).[33]

In contending for an absolute and impenetrable executive privilege here, the President's counsel point to the confidentiality normally attaching to certain deliberations in the Legislative and Judicial Branches (Brief in Opposition 590-591). Neither analogy, however, will bear the weight placed on it by counsel. To the contrary, the interpretation of the Speech or Debate Clause, which confers an explicit constitutional privilege on members of Congress, underscores the flaws in that claim.[34] "The immunities [of that Clause] were not written into the Constitution simply for the personal or private benefit of Members of Congress, but to protect the integrity of the legislative process." *United States* v. *Brewster*, 408 U.S. 501, 507 (1972). The purpose of the Clause was to "assure a co-equal branch of the government wide freedom of speech, debate and deliberation without intimidation or threats from the Executive Branch." *Gravel* v. *United States*, 408 U.S. 606, 616 (1972). The policies and interests underlying the Clause are thus similar to those underlying executive privilege.[35] But even though the Clause protects a legislator in the performance of legislative acts, "it does not privilege either

[33] Executive privilege compares in many respects to executive immunity. A government official may not be held liable for damages in a civil action for the consequences of acts within the scope of his official duties. See *Barr* v. *Matteo*, 360 U.S. 564 (1959). Immunity, as executive privilege, has been considered necessary to foster "the fearless, vigorous, and effective administration of policies of government." 360 U.S. at 571. But the immunity does not shield him for acts "manifestly or palpably beyond his authority." *Spalding* v. *Vilas*, 161 U.S. 483, 498 (1896); *Bivens* v. *Six Unknown Narcotics Agents*, 456 F.2d 1339 (2nd Cir. 1972).

[34] The Speech or Debate Clause, Art. I, S 6, cl. I, provides that no Senator or Representative may be "questioned in any other Place" for "any Speech or Debate in either House." It prohibits inquiry "into those things generally said or done in the House or in the Senate in the performance of official duties and the motivation for those acts." *United States* v. *Brewster*, 408 U.S. at 512.

[35] Executive privilege, it has been said, is granted "for the benefit of the public, not of executives who may happen to then hold office." *Kaiser Aluminum & Chemical Corp.* v. *United States*, 157 F. Supp. at 944. The re-election of an incumbent President can not automatically be equated with the transaction of the people's business.

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Senator or aide to violate an otherwise valid criminal law in preparing for or implementing legislative acts." *Gravel* v. *United States*, 408 U.S. at 626. Nor can even this explicit constitutional privilege be invoked to frustrate a grand jury inquiry into the activities of a Senator or his aide to determine whether criminal acts have been committed. *Ibid.* Thus, *a fortiori*, any shield of official confidentiality under an implicit executive privilege must yield in the face of public testimony indicating that the conversations covered by the subpoena dealt with illegitimate activities.

Similarly, counsel's analogy to confidentiality in the Judicial Branch, when analyzed, shows why the President can invoke no privilege here. Counsel cite *Fayerweather* v. *Ritch*, 195 U.S. 276, 306-307 (1904), for the proposition that judicial deliberations are confidential, as shown by the rule that evidence of jury deliberations ordinarily is not admissible to impeach a verdict. In so doing, however, they overlook the later, qualifying decision in *Clark* v. *United States*, 289 U.S. 1 (1933), holding that this privilege of confidentiality must yield in a criminal case probing alleged misconduct by a juror. Mr. Justice Cardozo's opinion for the Court recognized that the privilege, based upon a need for confidentiality, was generally valid: "Freedom of debate might be stifled and independence of thought checked if jurors were made to feel that their arguments and ballots were to be freely published to the world." 289 U.S. at 13. But Justice Cardozo continued [that] the privilege is subject to "conditions and exceptions" when there are other policies "competing for supremacy. It is then the function of a court to mediate between them." *Ibid.* In explaining that the interest in confidentiality must yield where there is evidence of criminal misconduct, the Court reasoned:

> The privilege takes as its postulate a genuine relation, honestly created and honestly maintained. If that condition is not satisfied, if the relation is merely a sham and a pretense, the jury may not invoke a relation dishonestly assumed as a cover and cloak for the concealment of the truth. 289 U.S. at 14.

The Court then drew an analogy to the attorney-client privilege, one of the most venerable privileges in the law, and emphasized: "The privilege takes flight if the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a

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fraud will have no help from the law. He must let the truth be told. The attorney may be innocent, and still the guilty client must let the truth come out." 289 U.S. at 15.

That, of course, is exactly what is involved in the present case. The evidence already available tends to show, in counsel's own words, that the "statements made by other persons to the President at the meetings for which the recordings have been subpoenaed were made by them pursuant to a conspiracy to obstruct justice" and that some of the participants in the conversations may "have betrayed his confidence by committing crimes" (Brief in Opposition 602-604). Counsel argue that, despite this, the general principle of confidentiality must be maintained in order to assure the effective functioning of the Presidential staff system! An analogous argument was made in *Clark*, and the rationale was decisively rejected.

> With the aid of this analogy [to the attorney-client privilege] we recur to the social policies competing for supremacy. A privilege surviving until the relation is abused and vanishing when abuse is shown to the satisfaction of the judge has been found to be a workable technique for the protection of the confidences of client and attorney. Is there sufficient reason to believe that it will be found to be inadequate for the protection of a juror? No doubt the need is weighty that conduct in the jury room shall be untrammeled by the fear of embarrassing publicity. The need is no less weighty that it shall be pure and undefiled. A juror of integrity and reasonable firmness will not fear to speak his mind if the confidences of debate are barred to the ears of mere impertinence or malice. He will not expect to be shielded against the disclosure of his conduct in the event that there is evidence reflecting upon his honor. The chance that now and then there may be found some timid soul who will take counsel of his fears and give way to their repressive power is too remote and shadowy to shape the course of justice. It must yield to the overmastering need, so vital in our polity, of preserving trial by jury in its purity against the inroads of corruption. 289 U.S. at 16.

It is hard to imagine a stronger need for piercing the cloak of confidentiality than in the present case. Requiring production of the evidence under these circumstances presents only a minimal threat to a President's ability to obtain advice from his aides with complete freedom and candor; for surely there will be few occasions upon which a grand jury will have similar cause to believe there is

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material evidence of criminality of high officials in the papers and documents in the Executive Offices of the President.

Counsel cannot seriously claim that the aides of any future President will be so "timid" in the face of such a remote danger of disclosure of their advice, or that some small risk of reticence is too great a price to pay to preserve the President's Office "against the inroads of corruption." In light of the substantial showing that there is reason to believe the conversations described in the subpoena were part of a corrupt criminal plan, they cannot be shielded by a privilege designed to protect the objective, candid, and honest formulation of policy in government affairs.

C. *The Need of the Grand Jury for the Evidence in the Impartial Administration of Justice is Greater Than the Public Interest Served by Secrecy.*

We submit, for the reasons stated, that the need to inquire into the allegations that the nine conversations were linked to criminal conspiracy is alone sufficient to take the present case out of any privilege based upon a generalized interest in preserving the confidentiality of executive deliberations. It is unnecessary, however, to make so broad a ruling. When the interests in secrecy are balanced against the need for the evidence under the circumstances of the present case in accordance with the settled judicial procedure[36], it becomes apparent that the need of the grand jury for the evidence greatly out-weighs any risk of harm from so limited a disclosure.

1. Each of the nine recordings listed in the subpoena is material evidence and may have critical importance in an on-going grand jury investigation into crimes on the part of high government officials. This is no "fishing expedition" where the grand jury is searching blindly for evidence which may or may not be relevant. The subpoena requires the tape recordings of nine specific conversations. Testimony before the Select Committee of the Senate, depositions in civil actions and White House press releases indicate that each of the conversations very probably deals in whole or in part with the activities under investigation. The public testimony given by principals in the conversations has been largely conflicting, hazy or

[36] See authorities cited in Part II(A)(3), p. 636, *supra*.

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incomplete. The electronic recordings perhaps may prove garbled in some instances, but it is much more likely that they are the best direct evidence of what was said on those occasions. Cf. *United States* v. *White*, 401 U.S. 745, 753 (1971). Production of the tapes, therefore, will minimize the risk that innocent persons may be indicted or that a guilty person may escape prosecution.[37]

The importance of each of the nine recordings is apparent from the discussion in the Statement, above, and is illustrated by public accounts of the conversation in the President's office on September 15, 1972. John Dean testified that in the presence of Haldeman he told the President that "all [Dean] had been able to do was to contain the case and assist in keeping it out of the White House." Dean also told the President that he "could make no assurances that the day would not come when this matter would start to unravel." The President congratulated him on his "good job" (S. Tr. 2229-30). Haldeman testified, on the other hand, that there were only innocent and casual references to the return of indictments and to a supposedly *bona fide* investigation conducted by Dean on the President's behalf (S. Tr. 6090-93). It is manifestly important for the grand jury to learn, if it can, which accounts of the conversation is correct. If Dean's testimony is true, the tape recording of the conversation will tend to prove that at least he and Haldeman were involved in conspiracy to obstruct justice. If Haldeman's testimony is true, the tape will probably tend to show that Dean is guilty of perjury. Both crimes are within the purview of the present grand jury. Production of the tapes is the best method of resolving the issue.

2. The fact that production is sought only for use by a grand jury under the normal rules of secrecy applicable to such proceedings minimizes any dangers from invasion of confidentiality. This is not a civil proceeding between private parties or even between the United

[37] Indeed, perhaps the "most valuable function of the grand jury" is to "stand between the prosecutor and the accused, or to determine whether the charge [is] founded upon credible testimony or [is] dictated by malice or personal ill will." *Hale* v. *Henkel*, 201 U.S. at 59. Speaking of the proper scope of a grand jury's discharge of its responsibilities, the Supreme Court has said: "society's interest is best served by a thorough and extensive investigation. . ." *Wood* v. *Georgia*, 370 U.S. 375, 392 (1962).

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States and a private party, where masses of confidential communications might be arguably relevant. Nor is this one of a long history of congressional investigations seeking to expose to the glare of publicity the policies and activities of the Executive Branch. In such instances the evidence is often sought in order to probe the mental processes of the Executive Office in a review of the wisdom or rationale of official Executive action. Compare *Morgan* v. *United States*, 304 U.S. 1, 18 (1938); *United States* v. *Morgan*, 313 U.S. 409, 422, (1941). The threat to freedom and candor in giving advice is probably at the maximum in such proceedings; they invite bringing to bear upon aides and advisors the pressures of publicity and political criticism, the fear of which may discourage candid advice and robust debate. The present grand jury investigation is not an inquisition into official governmental policy or actions, but an attempt to root out possible criminal activity.[38]

3. The allegations under investigation involve high Presidential assistants and criminal conduct in the Executive Offices. Such involvement is virtually unique. Because it is unlikely to recur, production of White House documents in this investigation will establish no precedent for recurrent grand jury investigations. Nor is there substantial likelihood that, because of disclosure under these unhappy circumstances, Presidents and their aides will be deterred from full, frank and vigorous discussion of legitimate governmental concerns.

4. Withholding the recordings may frustrate prosecution of wrongdoers in high places. It is easy for counsel claiming the privilege to express the expectation that prosecution will be possible without the tapes, but under the law (see note 10, *supra*, p. 622), it is now the responsibility of the Special Prosecutor, exercising the powers and duties delegated by the Attorney General, to see to it

[38] Indeed, despite the President's extravagant claim that the separation of powers gives the Executive's deliberative process "a virtual immunity from [judicial] inquiry" (Brief in Opposition 607), it is clear that in certain circumstances it is appropriate for the courts to probe Executive deliberations. See, *e.g.*, *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402, 420 (1971), holding that, despite the *Morgan* line of cases, "the court may require the administrative officers who participated in the decision to give testimony explaining their actions."

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that all relevant evidence is produced for the grand jury in accordance with the frequent admonitions of the Supreme Court. See *United States* v. *Dionisio*, 410 U.S. at 12-13; *Branzburg* v. *Hayes*, 408 U.S. at 688, 701-12; *Wood* v. *Georgia*, 370 U.S. at 392. Nor is it premature to note that if indictments are returned, there may be further demands for access to the tapes under the Jencks Act, 18 U.S.C. 3500, or cases like *Brady* v. *Maryland*, 373 U.S. 83 (1963). Of course, at this stage it is impossible to determine precisely what evidence might be material to the defense in future prosecutions and might be ordered produced. No great amount of imagination is required, however, to foresee the danger that prosecution of some possible indictments—assuming that the available evidence warranted indictments—would have to be abandoned if the recordings were withheld. All this is plainly contingent but it is not amiss to point out that there could hardly be a greater cause for loss of public confidence in our governmental institutions than frustration of the prosecution of a Chief Executive's aides and political associates by his withholding of material evidence.

6. Finally, it is worth noting that the confidentiality of deliberative processes is always subject to unanticipated disclosures. As the President's counsel concede, "Presidents volunteer a great deal of information because it is in the public interest to do so," despite the arguable applicability of executive privilege (Brief in Opposition 601). Thus, at the time of any particular discussion, neither a President nor his advisers can assume that their statements will remain confidential. Indeed, in this very case, even before the grand jury issued its subpoena, the President saw fit to disclose some aspects of these conversations with his closest advisers. Furthermore, he has also acknowledged publicly that he ordered all his conversations to be tape-recorded so that they could be made available to history. This is consistent with the common practice by Presidents and presidential advisers of publishing memoirs disclosing the consultations of the Executive Office. Thus, an order compelling disclosure of contemporaneous evidence in this unique case, which carries no inference of continuing or repeated disclosure of future conversations, can hardly present a substantially increased threat to the freedom and candor of advice available to the President.

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The balance of interests, therefore, overwhelmingly mandates production of the evidence.[39]

## III

### Any Privilege Attaching to the Recordings of the Conversations Has Been Waived By Other Disclosures of Their Content Given With the President's Consent

Even if the conversations recorded on the nine tapes listed in the subpoena could otherwise be regarded as covered by a privilege of executive confidentiality, the privilege cannot be claimed in the face of the voluminous testimony and other public statements concerning the conversations given with the President's consent. "A person who would otherwise have a privilege to refuse to disclose or to

[39] The President asserts in his Brief in Opposition (p. 599), without further explanation, that parts of the conversations deal with constitutional duties clearly irrelevant to the Watergate investigation. Obviously, we make no claim that conversations that are subject to a valid privilege and irrelevant to grand jury investigation should be disclosed either to the grand jury or the public. And the Special Prosecutor does not intend to present any irrelevant evidence to the grand jury.

We have made a prima facie, and we suggest, conclusive showing that the recordings that are material to the grand jury's investigation cannot be withheld. Although the President has not suggested any means of accommodating the respective interests, we feel certain that counsel for the President and the Special Prosecutor will be able to agree on a method for excising those portions of the recordings that should not be disclosed.

The President, in his reply, may suggest that *in camera* inspection would be appropriate as has often been done to separate producible material from unproducible. See *Environmental Protection Agency* v. *Mink*, 410 U.S. at 91-93; *United States* v. *Reynolds*, 345 U.S. at 8-10; *Carl Zeiss Stiftung* v. *V.E.B. Carl Zeiss, Jena*, 40 F.R.D. at 331-32. See also 18 U.S.C. 3500(c). We suggest that in the circumstances of this case, where the Special Prosecution is an appointee of the Attorney General and an officer of the Executive Branch, there is no necessity for the Court to burden itself with this procedure.

It is essential at this stage of the proceedings to preserve the authenticity of the recordings. If there is an *in camera* inspection and if it reveals that part of the conversations should be excised, the Court should have transcribed those portions that are to be disclosed. The original recordings should then be maintained by the Court under seal until all proceedings are concluded.

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prevent another from disclosing a specified matter has no such privilege with respect to that matter if the judge finds that he . . . without coercion and with knowledge of his privilege, made disclosure *of any part of the matter* or consented to such a disclosure made by any one." Uniform Rules of Evidence, Rule 37 (emphasis added). The rule stated was approved as "sound" by the Court of Appeals for this Circuit in *Ellis* v. *United States*, 416 F.2d 791, 801 m. 26 (D.C. Cir. 1969).[40]

The present case is governed by this familiar rule. Much about the subject matter of the nine conversations has been disclosed by the President or with the President's consent. In his statement of May 22, 1973, the President announced that, in light of the importance of the "effort to arrive at the truth," "executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in matters presently under investigation, including the Watergate affair and the alleged cover-up."[41] In the weeks following that expression of consent, extensive testimony has been given as to the substance of the communications which are recorded on the tapes subpoenaed by the grand jury.[42] Messrs. Dean, Mitchell, Ehrlichman, and Haldeman have presented testimony on the particular conversations in which they participated. Some parts give a general summary of the discussion. Other parts are an attempt to reconstruct the entirety of the conversations in as detailed a manner as possible. The extent of

[40] The court there also approved what became Rule 511 of the Proposed Federal Rules of Evidence (as transmitted to Congress by the Supreme Court on November 20, 1972):

> A person upon whom these rules confer a privilege against disclosure of the confidential matter or communication [including executive privilege] waives the privilege if he or his predecessor while holder of the privilege voluntarily discloses or consents to disclosure of any significant part of the matter or communication. This rule does not apply if the disclosure is itself a privileged communication.

[41] Verified Petition for Order to Show Cause, Exhibit C, 7-8.

[42] This testimony has been given in hearings held before the Senate Select Committee on Presidential Campaign Activities, and in depositions taken in connection with the pending civil action of *Democratic National Committee* v. *McCord, et al.* (D.D.C. Civil No. 1233-72). We are filing an Appendix quoting the testimony already given in various forums about the substance of each conversation covered by the subpoena.

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these disclosures is indicated in our statement and earlier portions of this brief. The President neither objected to such testimony nor claimed that it exceeded the scope authorized by his May 22 statement.[43]

The President himself has engaged in public discussion of matters covered in the conversations. On May 22 he outlined a version of the Watergate affair without mentioning the conversations but it now must be read, after Dean's testimony, as direct contradiction of Dean's account. Indeed, in his letter to Senator Ervin on July 23, 1973, after Dean's testimony concerning the conversations, the President reaffirmed his earlier statement. The President also described the conclusions concerning the conversations which he would have drawn from the tapes:

> Before their existence became publicly known, I personally listened to a number of them. The tapes are entirely consistent with what I know to be the truth and what I have stated to be the truth.

J. Fred Buzhardt, Special Counsel to the President, also has discussed the conversations with a view to publication, presumably with the President's consent. On June 21, 1973, *The New York Times* published a "White House analysis of conversations between President Nixon and John W. Dean" which is generally understood to be a memorandum made by an attorney for the Senate Select Committee based upon Mr. Buzhardt's presentation. Some conversations are barely noted. The suggestions as to the others go into considerable detail.[44] Surely, it is fair to presume that Mr. Buzhardt

[43] It is true that the President, through his Counsel, J. Fred Buzhardt, did instruct Haldeman not to testify before the Senate Select Committee concerning facts which Mr. Haldeman learned only by listening to the tapes that were made available to him. Insofar as Haldeman testified as to those portions of the March 21, 1973, meeting between Dean and the President which he did not attend, his testimony therefore does exceed Mr. Buzhardt's instruction. It should be noted, however, that the President made no other protest, and that Dean's previous testimony as to those portions of the March 21 meeting falls within the scope authorized by the President.

[44] For example, the suggestions concerning the March 13 conversation read:

> March 13—President inquired as to Ken Rietz. Dean said no illegality involved. President asked if Colson or Haldeman knew Segretti. President asked if Mitchell and Colson knew of Watergate. Dean said there was nothing specific on Colson; that he didn't know about Mitchell, but that Strachan could

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was acting with authority and that this version of the conversation was not the product of his imagination.

The President has even allowed some of the tapes to be used in preparing public testimony. Haldeman, not a disinterested witness, was allowed to take home the tapes of the conversations of September 15, 1972, March 21, 1973, and other unspecified dates after he had resigned (S. Tr. 6091, 6357-58), and to use them in preparing his testimony.

The short of the matter is that the President waived the confidentiality of the conversations, thus producing a flood of incomplete and contradictory testimony about some of the most important events in this investigation. As to a number of conversations the President has supplied his own version. Now the President asserts a privilege to withhold the most complete record available to supplement faulty recollections, resolve contradictions, and fill in important details.

The law is not so capricious. "[T]he moment confidence ceases, privilege ceases." *Parkhurst* v. *Lowten*, 36 Eng. Rep. 589, 596 (Ch. 1819). "This much," observes Wigmore, "is universally conceded." 8 Wigmore § 2311, at 599. The rule that disclosure eliminates any privilege that would otherwise attach to confidential information has been applied in cases dealing with claims of governmental privilege, *Roviaro* v. *United States*, 353 U.S. 53 (1967); *Westinghouse Electric Corp.* v. *City of Burlington, Vt.*, 351 F.2d 762 (D.C. Cir. 1965); *Fireman's Fund Indemnity Co.* v. *United States*, 103 F. Supp. 915 (N.D. Fla. 1952), as well as in cases dealing with attorney-client privilege, *Underwater Storage Inc.* v. *U.S. Rubber Co.*, 314 F. Supp. 546 (D.D.C. 1970), *United States* v. *Kelsey-Hayes Wheel Co.*, 15 F.R.D. 461 (E.D. Mich. 1954); physician-patient privilege, *Munzer* v. *Swedish American Line*, 35 F. Supp. 493 (S.D.N.Y. 1940); and marital privilege, *Pereira* v. *United States*, 347 U.S. 1, 6 (1954).

Counsel try to avoid the consequences of the President's approval

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be involved. President states again that Dean should compile a written report about the matter. Dean said Sirica was a hanging judge, the President said he liked hanging judges. They discussed fund-raising before April 7. Dean said that everything [that] had been done was legal. *New York Times*, June 21, 1973, p. 28, col. 4.

This account differs in critical respects from Dean's version.

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of public testimony about the conversations by arguing that he should be allowed to decide precisely how much should be told (Brief in Opposition 601). They also argue that application of the waiver doctrine to require fuller supplementation of the public statements might discourage Presidents from volunteering selected portions of confidential information in the future (Brief in Opposition 601). Similar contentions have been advanced with analogous privileges and have not proven weighty. If a person holds a valid privilege, he has a choice whether to stand on it or not. If he elects to disclose, the boundaries of the disclosure are no longer within his exclusive control. For example, in cases involving the analogous privileges accorded to attorney-client and physician-patient communications, it is clear that once testimony has been received as to a particular communication, either with the consent of the holder of the privilege or without his objection, the privilege is lost as to the entire communication and not only as to those parts already revealed. There can be no assertion of the privilege to block access to another version of the conversation. See, e.g., *Hunt* v. *Blackburn*, 128 U.S. 464, 470-71 (1888); *Rosenfeld* v. *Ungar*, 25 F.R.D. 340, 342 (S.D. Iowa 1960); *Munzer* v. *Swedish American Line, supra; In re Associated Gas & Electric Co.*, 59 F. Supp 743, 744 (S.D.N.Y. 1944); 8 Wigmore §§ 2327, 2389, at 636 & 855-61. The *Rosenfeld* case is particularly relevant, for there it was held that the oral disclosure of communications between an attorney and his client waived any privilege which might otherwise be invoked with regard to the documents that recorded those communications.

The same principles apply to the Fifth Amendment's privilege against self-incrimination. Once the privilege-holder elects to disclose his version of what happened, a due "regard for the function of courts of justice to ascertain the truth" requires further disclosure "on the matters relevantly raised by that testimony." *Brown* v. *United States*, 356 U.S. 148, 156, 157 (1958). Once the privilege-holder has opened the door, "he is not permitted to stop, but must go on and make a full disclosure." *Brown* v. *Walker*, 161 U.S. 591, 597 (1896). These principles are followed, of course, in this Circuit, even when separate proceedings are involved. See *Ellis* v. *United States*, 416 F.2d 791, 800-805, (D.C. Cir. 1969); *Viereck* v. *United States*, 139 F.2d 847, (D.C. Cir.), *cert. denied*, 321 U.S. 794 (1944);

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The possibility that the tapes contain as yet undisclosed details of the recorded conversations, far from justifying preservation of their confidentiality, provides a compelling reason for their disclosure. The extensive testimony already received on the taped conversations indicates that those discussions have critical importance in resolving issues before the grand jury. The tapes, original and contemporaneous recordings, are the best evidence that can be obtained of what actually transpired. *Schuyler* v. *United Air Lines*, 94 F. Supp. 472 (M.D. Pa. 1950), *aff'd*, 188 F.2d 968 (3d Cir. 1951). Since it is well settled that the best evidence that is obtainable in the circumstances . . . must be adduced to prove any disputed fact," *Sylvania Electric Products, Inc.* v. *Flanagan* 352 F.2d 1005, 1007 (1st Cir. 1965), the tapes are necessary to the proper functioning of the grand jury. Without the tapes, the grand jury would be relegated to dependence upon the sometimes vague, conflicting, and potentially self-serving recollections of the participants.

Forcing the grand jury to rely upon inferior evidence in its deliberations on a case of this magnitude does a disservice to the administration of justice by needlessly increasing the risk that the guilty may go free or the innocent be wrongly indicted. Since the purposes underlying any executive privilege which arguably might have attached to the subpoenaed tapes can no longer be served, and since the tapes are the best evidence of material allegations, any privilege which might otherwise have protected the tapes from disclosure to the grand jury has dissolved.

## *CONCLUSION*

Counsel for the President pose the issue: "Will the Presidency be allowed to continue to function?" (Brief in Opposition 587.) Our response is that the Presidency can indeed function, strongly and effectively, without the need to set above the law the determination by an incumbent that it will be "in the public interest" to withhold material evidence from a grand jury engaged in investigating serious charges of criminal misconduct upon the part of his aides.

The petition for an order directing the President or any subordinate offical with custody or control of the materials specified in the

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grand jury subpoena *duces tecum* to produce this evidence forthwith should be granted.[45]

Respectfully submitted.

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[45] The early resolution of the question whether the evidence will be produced is a matter of great importance. For the grand jury to vote to return and not to return indictments covering central aspects of a possible "cover-up" of the Watergate break-in, prior to receipt of this evidence, would be of questionable propriety. The term of the grand jury expires at the beginning of December 1973. Time would be required after the evidence was received not only for pursuit of leads it suggested, but also for adequate deliberation.

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CONCLUDING NOTE: On August 29, 1973, District Court Judge Sirica, after having received additional supplemental briefs and listened to oral argument, ruled that the determination of whether a claim of "executive privilege" was properly invoked was a "judicial decision." Sirica ordered the President to produce the tapes "forthwith for the court's examination *in camera*," that is, for examination in his chambers, privately. Sirica declared that if after such examination he found that any portion of the tapes were not properly subject to privilege, those portions would be for-

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warded to the grand jury.

The President's lawyers filed an appeal on September 6, asking the U.S. Court of Appeals for the District of Columbia for a Writ of Mandamus to direct the reversal of Sirica's decision. They argued that Sirica's order to the President for the production of the tapes even for *in camera* inspection only was "clearly erroneous and beyond the power of the judicial branch." On September 7, Special Prosecutor Cox also appealed. Cox contended that the Court of Appeals should direct Sirica to order the President to deliver the tapes to the grand jury without prior *in camera* inspection or, if the right of *in camera* inspection were upheld, that Sirica be directed to allow the Special Prosecutor to be present during any such inspection in order to "advise and aid the court in determining what parts were relevant to the grand jury's investigations."

The Court of Appeals on October 12 upheld District Court Judge Sirica's ruling that the tapes be turned over to him for *in camera* inspection and determination of whether they should be forwarded to the grand jury. Rejecting the validity of any "all-embracing claim of prerogative" and declaring that the President was "not above the law's commands," the Appeals Court held in a 5 to 2 decision that the President should specify the particular segments of the tapes that he believed should not be disclosed and the particular kinds of privilege on which each claim for non-disclosure was based. Sirica was ordered to hold a hearing in chambers at the request of either the President's attorneys or the Special Prosecutor on any claims of privilege presented. Following the *in camera* hearing and inspection, Sirica was to determine whether to allow the claim of privilege on any portion of the tapes to which it purportedly attached or to disallow it and disclose the relevant segment to the grand jury.

On Friday October 19, the last day allowed for appealing to the Supreme Court, President Nixon made the startling announcement that he would neither appeal the District Court and Court of Appeals decisions nor comply with them by delivering the tapes to Judge Sirica. Instead, the President stated that as a "compromise," he would personally prepare a summary statement of "everything in [the] tapes that has any bearing on Watergate" and forward copies of that summary both to Judge Sirica and the Senate Select Committee.

President Nixon asserted that the authenticity of his statement would be assured by giving "unlimited access to the tapes" to Senator John Stennis of Mississippi so that Stennis could verify that the statement was "full and accurate." The President also announced that in order "that the constitutional tension of Watergate would not be continued," he was directing Special Prosecutor Cox, as an "employe of the Executive Branch, to make no further attempts by judicial process to obtain tapes, notes, or

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memoranda of Presidential conversations."

Cox immediately issued a statement giving his "judgment" that the President was "refusing to comply with the court decrees." The Special Prosecutor indicated that he would have to bring that point "to the attention of the court" and added that he could not be a party to any "arrangement" precluding him from continuing to use the judicial process to obtain relevant presidential tapes, notes, and memoranda. The next day, Saturday, October 20, Cox reiterated this position at an extended news conference.

That same evening it was announced by the White House that Cox had been discharged as Special Prosecutor and that the Watergate Special Prosecution Force had been disbanded and its functions transferred "into the institutional framework of the Department of Justice." It was also announced that Attorney General Richardson had resigned rather than execute a presidential directive to dismiss Cox and that Deputy Attorney General William D. Ruckelshaus was himself discharged when he too refused to carry out the presidential order. Richardson indicated in his letter of resignation that his discharging Cox would have been contrary to repeated commitments he had made to assure the "independence" of the Special Prosecutor; Ruckelshaus wrote that his "conscience would not permit" him to carry out the President's instruction. The actual discharge order to Cox was delivered by Solicitor General Robert H. Bork, who automatically became Acting Attorney General as a result of the vacanies in the offices of Attorney General and Deputy Attorney General.

On Monday, October 22, the President's attorneys filed a statement with Judge Sirica advising him that they would contend the President's furnishing of the projected "summary statement" of the tapes constituted adequate compliance with the District Court and Court of Appeals orders. But on Tuesday, October 23, there was yet another startling development. One of the President's attorneys appeared personally before Judge Sirica and announced that the President had changed his position and was now prepared "to comply in all respects" with the court orders by delivering the tapes to the District Court.*

D. C. and F. P.

* This October 23 declaration of the President's intent to deliver the tapes for *in camera* inspection under the procedures detailed by the District Court and Court of Appeals orders abruptly brought to an end the constitutional issue between the President and the courts. The settlement of the constitutional issue did not, however, immediately produce the tapes called for in the subpoena. At the October 23 hearing, the President's attorney had already indicated that it would "require some time . . . to put [the] materials together." Eight days after this hearing at which compliance was promised "in full" and "in all respects"

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with the court orders directing delivery of tape recordings for eight meetings and one telephone conversation, the President's Special Counsel appeared before Judge Sirica and informed him that the tapes for one of the eight meetings and for the one telephone conversation would not in fact be forthcoming. The Special Counsel claimed on behalf of the President that the tapes did not exist because the two conversations in question had never been recorded. On November 21, the President's attorneys went before Judge Sirica again and now announced that an eighteen-minute blank portion existed in the tape recording for one of the remaining seven meetings. Sirica then ordered that the original tapes be delivered to his custody, which they were with various particularized claims of executive privilege on November 26. On November 28 the President's attorneys disclosed, again for the first time, that in addition to the tape with the eighteen-minute gap, blank sections existed in other tapes as well.

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# Post-Reconstruction Suffrage Restrictions in Tennessee: A New Look at the V.O. Key Thesis

J. MORGAN KOUSSER

Most contemporary observers accorded Mississippi primacy in the enactment of legal suffrage restrictions in the South. Delegates to its nationally watched 1890 constitutional convention broached most of the important arguments and proposals for disfranchisement, drafted the first comprehensive and permanent limitations on suffrage in the late nineteenth century South, and advanced the initial rhetorical and legal defenses of franchise contraction. Six other ex-Confederate states frequently adverted to Mississippi's experience as they passed similarly sweeping revisions in their fundamental voting requirements in the dozen years after 1890. Scholars have almost universally followed the contemporary pattern by concentrating on these seven states in their analyses of suffrage restriction. They have paid considerably less attention to the four Southern states which adopted simpler, mainly statutory limits on the electorate—Arkansas, Texas, Florida, and Tennes-

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see.[1] Yet the restrictive devices which Florida and Tennessee employed actually preceded the Mississippi convention, and although not as complex, were almost as effective as the Magnolia State's regulations in curtailing Negro voting. More obviously partisan and seemingly less racist in its goals than the seven more familiar movements, the drive for restriction in Tennessee was typical of the largely neglected, but extremely significant acts of legislative suffrage contraction.[2]

Among those scholars who did take all eleven ex-Confederate states into account in their surveys of disfranchisement was V.O. Key, Jr. In his *Southern Politics*, Key offered perhaps the broadest and, now, most widely accepted analysis of the reasons for the massive decline in electoral turnout in the turn-of-the-century South. Key wrote:

> The evolution of suffrage restrictions differed from state to state, and for some, perhaps even for all, southern states the thesis could be argued plausibly that formal disfranchisement measures did not lie at the bottom of the decimation of the southern electorate. They, rather, recorded a fait accompli brought about, or destined to be brought about, by more fundamental political processes.[3]

By "more fundamental political processes," Key seems to have

[1] For a more comprehensive analysis of these and other aspects of suffrage restriction in the eleven ex-Confederate states, see J. M. Kousser, *The Shaping of Southern Politics: Suffrage Restriction and the Establishment of the One-Party South, 1880-1910* (New Haven: Yale University Press, Spring, 1974). Readers of this article, see my Ph.D. dissertation of the same title (Yale University, 1971). The most important previous work on disfranchisement in the South, William A. Mabry's "The Disfranchisement of the Negro in the South" (unpublished Ph.D. dissertation, Duke University, 1933), concentrates on constitutional disfranchisement in seven states, and does not deal fully either with the other four states or legislative franchise limitations in any of the states. C. Vann Woodward's chapter, "The Mississippi Plan as the American Way," in *Origins of the New South, 1877-1913* (Baton Rouge, 1951), 321-349, focuses on the same events.

[2] Of course, Tennessee was not the first Southern state to adopt laws restricting the suffrage. Its experience is merely illustrative of the actions of several states which cut the electorate without adopting comprehensive suffrage plans.

[3] V. O. Key, Jr., *Southern Politics in State and Nation* (New York, 1949), 533. It is worth noting that Key's generalizations were based largely on the case of a single state, Texas.

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meant such factors as violence, the socio-economic hegemony of a small elite, and the South-wide decline in party competition.

Although stated with the qualifications, subtlety, and complexity which made Key equally artist and political scientist, the *fait accompli* thesis can only be evaluated in simplified form: Was the decline in Southern election turnout the direct result of the passage of the disfranchising laws, or, as Key believed, was that decline caused by other, more informal processes? Sacrificing complexity for clarity, I shall seek in this paper to test only the simplified version of Key's theory[4] and attempt to show that it does not account for the experience in Tennessee. In a forthcoming work, I shall argue that Tennessee's experience in restricting the suffrage was not an exception but a typical case, and that the *fait accompli* thesis as a general proposition must either be altered significantly or discarded.

In an effort to explain the changes in American electoral behavior, both Southern and non-Southern, around the turn of the century, Philip E. Converse has asserted that the national decline in voting turnout and other, related developments, from 1890 to 1910 were "unintended consequences" of electoral reforms. While recognizing the potency of the secret ballot and registration laws in reshaping the nineteenth-century political universe, Converse insisted that those who fostered such laws did not correctly estimate their impact. Since he believed the reformers to have been "forces of good government . . . mainly intellectuals, journalists, ministers, and other professionals," rather than working politicians, their myopia is understandable. "The Australian ballot," he claimed, "was pushed through primarily to guarantee the secrecy of the vote. . . . Personal registration was advocated primarily as a means of eliminating gross overtones of fraud in American elections; most of its instigators were dismayed to find that measures sufficiently strong to prove effective in the fight against fraud had the side effect of discouraging significant numbers of legitimate voters from the polls."[5]

[4] For a fuller analysis of Key's hypothesis, see Kousser, "Shaping," 28-34.

[5] Philip E. Converse, "Change in the American Electorate," in Angus Campbell and Philip E. Converse, eds., *The Human Meaning of Social Change* (New York: Russell Sage Foundation, 1972), 297-298.

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Less concerned than Key or Converse with the specific effects of the ballot limitation measures, other scholars have concentrated more exclusively on the identity and motivation of those who favored and opposed such laws. Probably the most popular theory is that lower-class whites seeking to secure their shaky social status demanded that blacks be cast out of the electorate. Purportedly, conservative or upper-class whites merely acquiesced in, or, at times opposed the disfranchisement of the Negroes. This hypothesis too will be reexamined in the light of the motivations that actually lead to the narrowing of the electorate in Tennessee.

## I

In the 1880s Tennessee's was the most competitive politics in a South where the Democrats increasingly dominated state-level politics. Overall turnout levels in governors' races ranged from 63 percent to 78 percent. Estimated participation exceeded two out of three white voters in each election, while estimated Negro voting approached the same high levels in presidential years but fell in off-years.[6] The Republicans polled more than 40 percent of the votes in each of the five gubernatorial contests from 1880 through 1888, winning the office when the Democrats split on the state debt issue in 1880. Whereas the dominant party had little opposition for many Congressional seats elsewhere in the South, Tennes-

[6] These and the other estimates in this paper are based on the ecological regression technique which was introduced by Leo A. Goodman in "Some Alternatives to Ecological Correlation," *American Journal of Sociology*, 64 (1959), 610-624. The methodology is discussed in more detail in my "Ecological Regression and the Analysis of Past Politics," *The Journal of Interdisciplinary History*, forthcoming. The estimates of the way Negroes and whites voted in Tennessee were computed by regressing the percentage of adult males who were Negro in each county against the percentage of adult males who voted Democratic, Republican, etc., and those who did not vote in each election. Several regression lines were fitted for each case: a single linear least-squares line for all counties, curvilinear lines based on equations with quadratic or interactive terms, and separate linear regression lines for the counties grouped into regions. The equations which consistently explained the highest percentage of variance ($R^2$) were those computed by separating the counties into two groups—East Tennessee, and the rest of the state. All the regression estimates given in this paper are weighted combinations of the separate estimates for the two groups of counties.

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see Democrats never garnered more than 54.3 percent of the total Congressional votes during the decade. The Volunteer State's Republicans always took two or three of the ten districts, and managed to hold the official Democratic candidates to less than 60 percent of the votes in 34 of the 50 Congressional races.

Although a Democratic newspaper was no doubt exaggerating when it claimed that its party represented "nine-tenths of the intelligence and property of the state," the two major parties did differ markedly in class and racial composition.[7] While it is difficult to determine directly the relation between wealth and voting behavior among whites for the 1880s—since one must make somewhat uncertain assumptions about exactly how Negroes voted—we can correlate economic and political variables after the vast majority of Negroes who stopped voting in Tennessee. Republican support in the 1908 governor's race appears to represent the core of white GOP strength for the 1880s.[8] Assuming Negro wealth per male adult averaged $100, the differences in support for the major parties among whites is quite striking.[9] Whites in a typical poor county in which wealth per white male adult averaged $400 gave the Republicans about 62 percent of their votes, leaving the Democracy only 38 percent. In an affluent county with a per capita white wealth figure of $1400, the whites could be expected to re-

[7] *Memphis Daily Avalanche*, March 31, 1889.

[8] This statement is based on an analysis of numerous graphs, several regression estimates of the way the 1884 white voters behaved in 1908, and reports in contemporary newspapers.

[9] These figures are based on a regression analysis of the relationship between white wealth and the percentage of the white adult males voting for Republican and Democratic gubernatorial candidates in 1908. For each rise of $1,000 in white wealth, Democratic strength, on the average, rose by 11.4 percent, while Republican strength declined by 23.2 percent. One gets almost identical results for any value of Negro wealth between $50 and $200. Although Tennessee did not separate real and personal property assessments by race, several other Southern states in this period did. Analyses of data from the other states show that Negro wealth per male adult was remarkably stable from county to county, and that the average Negro adult male held between $100 and $150 worth of property in 1908. The formula for estimating white wealth is simply:

$$\frac{\text{total wealth} - (\$100) \times (\text{number of adult male Negroes})}{\text{number of adult male whites}}$$

For further details, see Kousser, "Shaping," Appendix B.

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verse those figures and provide the Democrats with a 65–35 margin. There were similar relationships between white wealth and voting behavior within each section of the state.

The fact that white wealth correlated very strongly (+ .72) with the proportion of Negroes in the population indicates that the GOP strength centered in the poor mountain and hill counties, which had few Negroes, while the Democrats polled their heaviest majorities among white voters in the richer agricultural and commercial counties where blacks comprised substantial percentages of the population. In addition to their class base, the GOP attracted whites who stood to gain by the protective tariff and other positive governmental policies. The GOP also had a strong following among East Tennessee ex-Unionists who never forgave the Democrats for leading Tennessee into the Confederacy. In the 1884 governor's race, for example, an estimated two out of every three East Tennessee whites voted for the GOP, while five out of seven of their counterparts in the middle and western sections went for the Democracy.

Substantial majorities of the black voters—estimated at 64 percent in 1884, for instance,—joined poor, hill country whites in the Republican coalitions in the early eighties.[10] Black leaders during this period laid claim to a good deal of recognition within the party. In the legislative sessions from 1880 through 1886, black Republicans at various times won seats from every Negro-majority county and from two counties where the blacks made up less than 40 percent of the population. Though the number of offices they held was rarely if ever in proportion to Negro voting strength, blacks also often filled positions on county Republican tickets.[11]

Recognizing the political importance of their black constituency, white Republican leaders submerged the racism which they, as white Southerners, may have felt. In 1885, for instance, all 32 Republican state legislators voted for a black, Samuel Allen McElwee, for speaker of the Tennessee house of representatives.[12] To

[10] Compare Converse's belief that "generalized deference from 'subject' populations . . . probably characterized the South until relatively late in the nineteenth century." See his "Change in the American Electorate," 299.

[11] Robert Ewing Corlew, "The Negro in Tennessee, 1870-1900" (unpublished Ph.D. dissertation, University of Alabama, 1954), 165-178; *Memphis Daily Avalanche*, July 5, 1886; August 3, 1888.

[12] Tennessee *House Journal* (1885), 7. For biographical information on Mc-

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nominate McElwee to such an important post not only directly challenged the shibboleth of Negro inferiority, it also presented the Democracy with concrete evidence for their habitual cry that Republican rule meant Negro domination. More than any other single act, the unanimous vote for McElwee demonstrated how far the white Republicans were willing to go to please their black allies, as well as the respect with which Negro leaders were treated as long as black political power was still effective. Moreover, all three Tennessee Republican Congressmen voted for the Lodge Elections Bill, a measure correctly condemned by Democrats as the most potent attack on white supremacy since 1875; the leading Republican newspaper openly favored integrated transportation facilities; and Republican legislators bitterly fought the convict leasing system and the laws aimed chiefly, as we shall see, at disfranchising Negroes.[13] While these GOP efforts were somewhat timid and obviously designed to foster the party's political success, they do merit recognition, for they came at a time when the typical Southern Democratic responses to the "Negro Question" were fraud, suffrage limitation, and lynching.

If Republican strength forced Tennessee Democrats after 1880 to close ranks more tightly during election campaigns than elsewhere in the South and to rely more on caucus decisions during sessions of the legislature, the nature of the GOP constituency invited Democrats to restrict the suffrage when they got the chance. That chance came in 1889 when the Republicans, who had been able to filibuster a registration bill to death in the 1887 session, won only 35 seats in the 132-man state legislature.

The opportunity was hardly fortuitous. In 1886 and 1888 black belt[14] Democrats employed some force and a great deal of fraud to overthrow their formerly potent Republican adversaries. When

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Elwee, see William J. Simmons, *Men of Mark: Eminent, Progressive, and Rising* (New York, 1968), 498-505.

[13] Editorials and news coverage in the *Knoxville Daily Journal*, March 13, April 12, 1889; November 14, 23, 24, 1896, indicate that newspaper's relative liberalism on racial questions; typifying the Democratic attitude in Tennessee was a speech by Congressman Josiah Patterson, reported in the *Memphis Daily Appeal*, November 5, 1890. See *Memphis Daily Avalanche*, March 21, 22, 30, 1889 for Republican efforts to destroy convict leasing.

[14] The phrase "black belt" as used in this article refers to those counties with Negro majorities.

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early returns from the November, 1886 state elections showed a Democratic majority in Fayette county, more than two-thirds of whose residents were Negroes, a leading Democratic newspaper expressed "the greatest surprise." Republicans had carried that county in the August local elections by their "usual majority" of 1500 out of a total voting population of about 5700. The chief explanation for this startling upheaval, however, was not difficult to discover. Even Democratic newspapers noted that election officials from that party had refused to open the polls in one heavily Republican district and rejected the votes at another because of "irregularities," and these shenanigans no doubt represented only the most overt Democratic tricks. In another black belt county, Shelby, the Republicans charged that during the August local elections, Democrats forced blacks to leave the polls and neglected to count 3000 votes which Negroes had managed to cast.[15]

The 1886 contests were mere rehearsals for 1888. As the *Memphis Daily Appeal* noted, GOP activity in the Tenth Congressional District, where almost half of the potential voters were black, typically declined in off-years but increased enough in presidential years to allow the Republicans to elect their candidate to Congress. Yet despite what the *Appeal* termed "an extraordinary effort" by the Republicans in 1888, the Democrats carried the district by nearly two to one.[16]

Republicans immediately charged the Democrats with massive frauds. "For the first time in the history of the state," intoned the *Knoxville Journal*, "fraud carried Tennessee for the [D]emocratic party." The contest in the Tenth was a "notorious highway robbery . . . one of the most flagrant outrages ever perpetuated [perpetrated?] upon the ballot-box in a free republic . . . a wholesale steal . . . an infamous election conspiracy . . ."[17] Federal election supervisors reported unmistakable frauds in at least three wards in Shelby county, two districts in Fayette county, and one in Hay-

[15] *Memphis Daily Appeal*, November 4, August 8, 1886; *Memphis Daily Avalanche*, August 6, November 5, 1886.

[16] *Memphis Daily Appeal*, October 24, 1888. The GOP carried the Tenth in 1880 and 1884.

[17] *Knoxville Journal*, November 21, 23, 1888. The *Journal*'s November 21 statement indicates that the paper did not make such charges lightly; this was by no means the first close statewide election of the decade.

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wood county. Republican allegations that Democratic majorities in some Memphis wards exceeded the total number of possible voters several times over elicited no specific denials from spokesmen for the victorious party. Democrats also kept down the Republican vote by issuing wholesale, dilatory challenges to Republican voters, by changing polling sites at the last minute, and, in Haywood, by calling out a local white militia, the Mason Guards, to "maintain order."[18] What the Republicans lost at the polls they could not regain in the courts: Federal judges dismissed a Shelby case on a technicality; the Republican Congressional candidate finally abandoned his contest after more than a year of gathering evidence to overcome his opponent's reported 8000-vote majority; and Negro witnesses failed to convince four all-white juries of the guilt of Fayette county election officers.[19]

Having vanquished their local opponents at least temporarily, the black-belt Democratic leaders adjourned to Nashville to push legislation insuring their newly won positions against counterattacks at home or the efforts of national Republicans to mandate fair election procedures throughout the nation.[20] Democrats from Negro-majority counties controlled all but one of the legislative posts key to the passage of election legislation in 1889. House Speaker W. Lucas Clapp, a native of Mississippi and a graduate of Ole Miss, represented Shelby county. Senate Speaker Benjamin J. Lea, a farmer and Wake Forest graduate who had sat in the Tennessee secession legislature, resided in Haywood county. J. H. Dortch was chairman of the Senate Privileges and Elections Com-

[18] *Memphis Daily Avalanche*, August 3, 4, 5, November 7, 18, 1888; *Memphis Daily Appeal*, December 8, 1888, July 20, 1890. When Haywood went Democratic in the 1888 local elections, it was, according to the *Avalanche*, the first time since the Civil War. In the 1886 state election, Haywood had been 2-1 Republican; in 1888, the count went 2-1 Democratic.

[19] *Knoxville Journal*, December 8, 1888; *Memphis Daily Appeal*, December 21, 1888, March 27, 1889, February 9, 15, 1890; *Memphis Daily Avalanche*, February 15, 1890. Significantly, three prominent local Democrats volunteered to defend the accused Fayette officials: General J. J. Dupuy, Tenth District Congressman Josiah Patterson, and State House Speaker W. Lucas Clapp.

[20] A black belt newspaper discussed and endorsed the secret ballot in the month following the 1888 contest. See *Memphis Daily Appeal*, December 13, 1888. The *Memphis Daily Avalanche*, February 28, 1890, called on the state legislators to pass a law restricting suffrage in order to counteract the threatened Lodge Elections Bill.

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mittee. This 31-year-old son of an ante-bellum planter-politician, a graduate of both Southwestern Presbyterian College in Clarksville and Vanderbilt Law School in Nashville, edited the local newspaper in Fayette county. As chairman of the Democratic County Executive Committee, he managed the political overthrow of the blacks in 1888. C. A. Stainback, son of another ante-bellum Fayette county planter, chaired the committee which considered the election bills in the House. The only important post which escaped the black belt, the chairmanship of the Democratic caucus, was held by Thomas O. Morris of Nashville. Negroes, who comprised 38 percent of that city's population, provided the bulk of Republican votes in the tight party competition for control of the capital city.[21]

The election measures that were proposed in the new session of the legislature fell into four categories. The first, the "Myers law," required voters in districts or towns which cast 500 or more votes in 1888 to register at least 20 days before every election.[22] The necessity of making four trips to the polls to vote in the local and state elections in each even-numbered year would no doubt deter political participation by working class voters with inflexible schedules. The provision that voters had to present their registration certificates at the polls would constitute another hardship for poor people unused to preserving records. Moreover, registration provided another stage at which election officers could harass and discriminate against potential opposition party voters, and one where discrimination could be even more effective, since it was less public than at the polling places on election day. Written in Dortch's Senate committee, the bill passed both houses on strictly party votes, only two East Tennessee Democrats in the House crossing party lines to oppose the act.[23] Likewise, party loyalty determined almost every vote on the second act, the "Lea law," which

[21] Biographical details are from *Nashville Daily American*, January 5, 7, 1889, and *Nashville Banner*, March 15, 1890. Nashville had twice sent black Republicans to the state legislature. See Corlew, "Negro in Tennessee," 122, 165.

[22] The vast majority of Tennessee's Negroes, who were more likely to reside in cities and towns than the whites, lived in the area covered by the Myers Act. See *Nashville Daily American*, March 9, 1889.

[23] *Acts of Tennessee* (1889), 414-420; *Senate Journal* (1889), 652; *House Journal* (1889), 741-745.

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provided for two separate ballot boxes for federal and state elections in order to prevent federal supervisors from overseeing state elections in the event the pending Lodge Elections Bill passed the U.S. Congress. Only five East Tennessee Democrats deserted their party on this issue.[24]

The secret ballot act, drafted and managed by Sen. J.H. Dortch, was the third major proposal. Until 1888, when Massachusetts adopted the so-called "Australian System," political parties in the United States had printed and distributed their own ballots. Besides discouraging split-ticket voting and encouraging strong local party organizations—just making sure all potential voters had ballots necessitated meticulous campaigning at the grass roots—the party ballot insured illiterates the right to vote. The publicly printed ticket, on the other hand, required the voter, often without any assistance, to scurry through a maze of names of candidates running for everything from presidential elector to county court clerk. Since these names were often arranged by office, instead of party, the Australian ballot demanded not merely literacy, but fluency in reading English. The secret ballot was, therefore, not merely a method of decreasing election fraud, but also an ideal means of disfranchising functional illiterates.[25] It was with this latter goal in mind that Democratic chieftains offered Australian ballot laws in at least three Southern states in 1889. They managed to pass such a law only in Tennessee.[26]

[24] *Acts of Tennessee* (1889), 437-438; *Senate Journal* (1889), 678-679; *House Journal* (1889), 804-805.

[25] For a fuller discussion of the secret ballot and references to the relevant literature, see Kousser, "Shaping," 111-119. The census of 1900 enumerated the adult males who told officials they could not even write their own names. The percentages of white adult males in the South who could only make their marks ranged from 8 to 19; among Negroes, the proportions ranged from 39 to 61. The numbers who could not master a purposely complex ballot were obviously much larger.

[26] The Arkansas and Alabama legislatures also seriously considered secret ballot acts. On Arkansas, see Arkansas *Senate Journal* (1889), 365, 461, 501-502, and Arkansas *House Journal* (1889), 806-807, 850-854, 922; on Alabama, see *Memphis Daily Appeal*, February 8, 1889. Mississippians also discussed the secret ballot during the period before the 1890 constitutional convention. See *Ibid.*, February 10, 1890. The custom of exchanging law books and newspapers throughout the South rapidly spread information on the intent, provisions, and effects of disfranchising laws. Each state thus became, in effect, a laboratory for elitism. The *Jacksonville Florida Times-Union*, April 24, 1889, for example,

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The principal purposes of the Dortch law were to disfranchise Republicans, especially Negro Republicans, and, by eliminating the necessity for stuffing so many ballot boxes in what had been strong Republican areas, to rob the GOP of a telling campaign issue.[27] When a Republican newspaper charged that "Democrats do not hesitate to say that the Dortch bill is framed especially for the protection and preservation of the Democratic party," the Democratic *Memphis Daily Avalanche* responded by confirming the allegation: "The Democratic party represents nine-tenths of the intelligence and property of the state and a measure for its protection is therefore for the preservation of the best interests of the state. Certainly the Dortch bill is for the benefit of the Democratic party."[28] The *Avalanche* also touted the legislation as an answer to the "Negro Question":

> The first thing to be done is to cut off the great mass of innate ignorance from its baleful influence in our elections, and then we will be able to see further what can be done upon a more permanent basis. It is certain that many years will elapse before the bulk of the negroes will reawaken to an interest in elections, if relegated to their proper sphere, the corn and cotton fields, by some election law which will adopt the principle of the Australian ballot . . .[29]

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urged that state's citizens follow Tennessee's lead in adopting an Australian ballot.

[27] Compare Corlew, "Negro in Tennessee," 139. The standard history of the state views the Myers, Lea, Dortch, and poll tax laws as measures "designed to preserve the purity of the ballot box, facilitate honest elections, and raise revenue for schools." See Stanley J. Folmsbee, Robert E. Corlew, and Enoch L. Mitchell, *History of Tennessee* (New York, 1960), vol. II, 158. Drafted by the chief defilers of the ballot box, the first three laws lacked effective enforcement mechanisms. Since poll tax payment, far from mandatory, was discouraged, that tax can hardly be considered a school revenue measure.

[28] *National Review*, n.d., quoted in *Memphis Daily Avalanche*, March 31, 1889, and *Avalanche* editorial following the quotation. The *Memphis Daily Appeal* headlined its April 3, 1889 edition "Safe at Last—Good-bye, Republicanism, Good-bye—The Myers Registration and Dortch Election Bills Passed . . ." Another Democratic newspaper, the *Nashville American*, stated on March 27, 1889, that "the Democratic party would be the chief beneficiary of this law." The politically independent *Nashville Banner*, April 3, 1889, decried the Dortch law as "a party and race discrimination." Similarly, see editorials in the *Knoxville Journal*, April 9, 10, 1889.

[29] *Memphis Daily Avalanche*, March 27, 1889. Republican newspapers agreed that one of the Dortch bill's chief objects was to disfranchise blacks. See

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The provisions of the bill as initially drafted confirm the *Avalanche*'s view of the objects of the legislation. The secret ballot first applied to the 78 civil districts in 37 counties which contained nearly all the state's blacks, and any person who could have voted in 1857 (before Negro enfranchisement) was allowed assistance in marking his ticket.[30] The majority party leadership thought, in addition, that the bill "will also stop the *cry* of fraud," as the chairman of the Shelby County Democratic Executive Committee put it.[31] In other words, the Dortch law allowed Democrats to appear honest, but still retain the possibility of artificially inflating their totals if the need arose.

Despite its partisan and racial purposes, the Dortch bill aroused a good deal of opposition among Democrats from overwhelmingly white counties.[32] When Speaker Clapp first attempted to obtain Democratic caucus endorsement of the bill, the uproar was so great that the caucus had to be adjourned. Though opponents of the bill tried a filibuster at the next caucus, its proponents obtained a 22–11 endorsement. Even then, the bill's Senate backers, realizing that they could not produce the necessary 17 votes (24 of the 33 senators were Democrats), had to postpone consideration of the bill for five days. One newspaper correspondent remarked that the bill's

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*Knoxville Negro World*, quoted in *Knoxville Daily Journal*, July 18, 1892, *Ibid.*, July 24, 25, 1892.

[30] *Nashville Daily American*, March 9, 13, 1889. Since the 1857 Massachusetts Constitution had proclaimed that henceforth new voters had to be literate, its 1888 secret ballot law contained a provision prohibiting election inspectors from aiding illiterates who had not been qualified to vote in 1857. (The 1857 Massachusetts Constitution apparently provided the inspiration for the Southern "grandfather clauses.") Dortch lifted the section of the 1888 Massachusetts act whole into the Tennessee law to assist Southern defense of that statute in Congress. The Dortch law as finally passed allowed no help at all to illiterates.

[31] Quoted in *Memphis Daily Avalanche*, April 1, 1889, author's italics. For a similar statement, see editorial in *ibid.*, March 24, 1889. According to the *Knoxville Daily Journal*, July 27, 1892, the Dortch law "was passed for the simple reason that ballot-box stealing, fraudulent voting and corrupt counting had become dangerous" to the Democratic party.

[32] The progress of the Dortch bill in the legislature may be followed in the March 13, to April 5, issues of the *Memphis Daily Appeal*, *Memphis Daily Avalanche*, *Nashville Daily American*, and *Nashville Banner*. Votes are taken from the Tennessee *Senate Journal* (1889), 707-708, and Tennessee *House Journal* (1889), 743.

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course at this point "looked squally"; another characterized its condition as "precarious," its fate "very uncertain." The day before the third reading roll call in the Senate, the opposition counted at least 16 votes, and a visitor thought Dortch seemed "like a man who was getting ready to die game."[33]

Why did some white county Democrats oppose the Bill? First, even though tailored to assist Democratic fortunes in the state as a whole, the bill, many believed, would disfranchise poorer, less literate whites of both parties, particularly in the predominantly white hill country. As we have already seen, Democrats usually polled over a third of the white votes even in the poorest counties, and they gained majorities in slightly wealthier ones. While its greatest strength among whites lay in the richest counties, the Democracy did compete with the GOP in less affluent regions. In these places, universal manhood suffrage, at least for whites, commanded strong support, and the threat of restriction gave the Republicans a potent campaign issue.[34] Consequently, some white-county Democratic legislators were less than enthusiastic about helping the party in the state, and especially in the black belt, for they feared that supporting the Dortch law might cost them their own seats. The second reason for Democratic deviations was that no one could predict precisely what the impact of the Dortch law would be on every group in the electorate. Men elected under the old laws hesitated to change the existing rules. Third, the spectre of Republican control in the black belt did not seem so horrible to upland Democrats as it did to those who would be more directly affected. If the parochial needs of black belt Democrats were to be fulfilled, the party's leaders would have to quiet the parochial apprehensions of white county Democrats.

Democratic leaders salvaged the bill by offering concessions to

[33] *Memphis Daily Appeal*, March 19, 1889; *Memphis Daily Avalanche*, March 28, 29, April 4, 1889.

[34] Recognizing the unpopularity of the new laws among many whites, the Republicans screamed denunciation of them in their 1890 platform. The Democrats apparently shared the opposition's appraisal of the election law issue, for they did not mention the measures in their own platform. See Charles A. Miller, *The Official and Political Manual of the State of Tennessee* (Nashville, 1890), 343-345. The Democrats, of course, made no move to repeal the statutes.

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senators from their party who feared the disfranchisement of some of their white constituents, and, more important, by appealing to their partisanship. Afraid that without the Dortch law, the state would "witness a sweeping Republican victory next year," the *Avalanche* issued "one final appeal to the Democrats of the legislature. For the first time since the war we have a majority of the General Assembly.[35] Shall we utilize this, or fritter away a golden opportunity? . . . Ask anybody who is familiar with the politics of this county, and he will say give us the Dortch bill or we perish." To defeat it would "turn Shelby county bound hand and foot to the venality and corruption of negro rule."[36] Three Shelby Democratic leaders who rushed to Nashville at the last moment to lobby for the bill undoubtedly used the same argument to change the mind of a senator whose "nay" would have killed it. After Dortch, in a gesture to quiet the fears of rural white county Democrats, agreed to reduce the coverage of the bill to the state's four largest cities, he closed the debate fittingly by "urg[ing] especially that [his bill] was to the interest of the Democratic party."[37] All five of the Democratic Senate opponents of the law represented overwhelmingly white counties, four of which lay in East Tennessee. Every Republican, of course, also voted against the bill.

Although less difficult, House passage of the Dortch law further emphasized the bill's partisan purposes. The secret ballot was railroaded through the House on the same day as the Myers law and an act gerrymandering the Third Congressional district in order to oust the Republican incumbent. Democratic high-handedness

[35] By "we," the *Avalanche* did not merely refer to Democrats, for that party had enjoyed majorities in the legislature for two decades. Rather, the reference seems to be to Democrats from the middle and western sections of Tennessee, who would, presumably, be more likely to support disfranchisement moves. Previously, Republicans had controlled enough seats in these two sections to form coalitions with East Tennessee Republicans and Democrats to prevent serious consideration of laws limiting suffrage.

[36] *Memphis Daily Avalanche*, March 26, 30, April 1, 1889.

[37] *Ibid.*, April, 3, 4, 1889. Actually, the 1889 law applied to Chattanooga, Knoxville, and the entire counties of Davidson (Nashville) and Shelby (Memphis). In 1891, the secret ballot and registration laws were put into operation throughout all four counties. For provisions of these laws, see *Acts of Tennessee* (1889), 364-371, 414-420; *Acts of Tennessee* (1890), 438-440. About one-third of the state's blacks, and nearly 20 percent of the total state population, resided in these four counties.

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provoked what one veteran correspondent called "the wildest scenes that were probably ever enacted in any Tennessee legislature . . ."[38] Speaker Clapp refused to allow a recorded vote on amendments to the Dortch law, refused to record votes on the third reading passage of the Myers law, refused to read the Dortch act the third time (as the legislative rules required), and even refused to allow the Republicans to enter a protest against passage of these laws in the *House Journal.* In response, the Republicans tried to prevent a roll call on the Dortch act by shouting, stamping, and beating on their desks. They also at first abstained from voting, hoping that the Democrats would be unable to maintain a quorum. Their efforts failed, despite the fact that 12 white county Democrats joined the 23 Republicans in recording their votes against Dortch's literacy test.

The fourth law, the poll or capitation tax, attracted much less attention in 1889–90 than the Dortch Act.[39] In the 1889 session, Democrats were not so united on the capitation tax; many critics thought it would disfranchise more white Democrats than Negro Republicans, even though it was aimed principally at the blacks.[40] The chief poll tax bill considered during the 1889 session appears to have been a hybrid of measures introduced in the House by Pearson of Madison (48 percent Negro in 1890) and Callicott of Obion (only 16 percent black, but in the most heavily Negro, western section of the state). After the House Judiciary Committee reported the bill unfavorably, it failed to pass on third reading, 32–39. The *Memphis Daily Appeal* deeply regretted this defeat, for it believed the tax on voting would have eliminated from the electorate "criminals . . . the bummer class . . . strikers . . . heelers . . . [and] machine men." The Senate tabled a similar bill without a record

[38] *Memphis Daily Appeal,* April 3, 1889.

[39] Although the Tennessee Redeemer Convention of 1870 authorized the use of the poll tax to limit the electorate, a coalition of Republicans and followers of ex-President Andrew Johnson struck down the only serious effort to pass enabling legislation before 1889. See Tennessee Constitutional Convention, *Journal* (1870), 159-161, 174-181, 210-211, 397-398; Frank B. Williams, "The Poll Tax as a Suffrage Requirement in the South, 1870-1901" (unpublished Ph.D. dissertation, Vanderbilt University, 1950), 57-95; Philip M. Hamer, *Tennessee, A History, 1673-1932* (New York, 1933), vol. II, 679-681.

[40] *Nashville Banner,* February 28, 1890; *Knoxville Daily Journal,* March 13, 1889.

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vote. Every Republican except one recorded on the House vote opposed the bill. Democratic resistance generally varied with the proportion of Negroes in each county (Table I), but party sentiment had not yet coalesced. The Democratic caucus took no position on the measure at the time, and one of the party's most important leaders, Joel Fort of Robertson county, opposed the bill. Even such conservatives as Stainback of Fayette joined in the opposition cry that the bill would oppress the poor, white as well as black.[41]

In the extra session a year later, the Democrats (for reasons not clear from the available sources) solidified their position on the poll tax: H. 1, a poll tax measure written by T. Bun Carson of Lauderdale (42 percent black), fell a single vote short of the number constitutionally necessary for passage in the House. A similar bill carried the Senate, where only three white-county Democrats bucked the party whip. Despite virulent opposition from several hill country Democrats opposed to denying poor men the franchise, the Democratic caucus endorsed the Senate poll tax bill five days after the defeat of the Carson measure.[42] As Table I shows, rebellion among the Democrats was correlated with the percentage of Negroes in each delegate's county. As party pressure to support the poll tax increased, the number of dissenters dropped off, roughly in proportion to the "whiteness" of their counties.

The scene on the day of the final vote in the House was rather dramatic, since the Tennessee Republicans, reversing their national party's tactic under the Reed rules in Congress, tried to subvert the legislature by refusing to answer roll calls. Two of the House Democrats whose votes were necessary for a quorum on the poll tax bill had to answer from sickbeds in an adjacent committee room.[43] But the partisan effort finally succeeded. With the poll tax added to the registration, two-box, and secret ballot laws, the black belt leaders had erected solid legal barriers against a Negro resurgence. Since the East Tennessee Republicans were notoriously

[41] *Memphis Daily Appeal*, March 12, 1889; Tennessee *House Journal* (1889), 363, 377, 472-474; Tennessee *Senate Journal* (1889), 485; *Nashville Daily American*, February 28, March 12, 1889.

[42] Tennessee *House Journal* (extra session, 1890), 26-27, 99-100; *Senate Journal* (1890), 66; *Nashville Banner*, March 4, 1890; *Memphis Daily Avalanche*, March 4, 1890.

[43] *Nashville Banner*, March 10, 11, 1890.

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TABLE 1

*Democratic Votes on Three Roll Calls on the Poll Tax Cross-Classified with Percent Negro in the Representatives' Counties (Abstainers Omitted)*

| % Negro | March 11, 1889 | | February 26, 1890 | | March 11, 1890 | |
|---|---|---|---|---|---|---|
| | For | Against | For | Against | For | Against |
| 0–9 | 1 | 9 | 1 | 7 | 5 | 6 |
| 10–19 | 5 | 4 | 7 | 5 | 9 | 1 |
| 20–29 | 11 | 2 | 13 | 3 | 17 | 0 |
| 30–39 | 7 | 1 | 8 | 1 | 8 | 1 |
| 40–49 | 4 | 5 | 9 | 2 | 10 | 2 |
| 50–59 | 1 | 2 | 5 | 0 | 7 | 0 |
| 60–69 | 1 | 0 | 1 | 0 | 1 | 0 |
| 70–79 | 1 | 0 | 1 | 0 | 1 | 0 |
| Total | 31 | 23 | 45 | 18 | 58 | 10 |

Chi-square is less than .05 for each roll call — i.e., such a relation between % Negro and voting behavior could be expected to occur by chance less than five times out of one hundred.

impecunious, the Democrats, unless they split seriously or outsiders paid the poll taxes for poor whites, could henceforth easily control state-wide elections.

It is perhaps a bit misleading to speak of these or other Southern election codes as *disfranchising* laws. No post-1870 law in the South absolutely prohibited any adult male citizen, except the mentally ill and those convicted of serious crimes, from voting in general elections. Illiterates could, in theory at least, learn to read; propertyless men could acquire wealth; those who failed to register or pay their poll taxes one year could fulfill those prerequisites before the next election. What the suffrage statutes did, rather, was to throw up barriers to discourage participation by those men Democratic leaders deemed undesirable electors.

Of course, astute individuals or strong party organizations could scale these barriers. Party machines could herd loyal voters before registration officers, run schools to teach barely literate or even illiterate citizens to recognize the names of party nominees, and pay poll taxes for their stalwarts.[44] (Since poll taxes could be paid

[44] For evidence that party machines organized their followers to register, see *Knoxville Daily Journal*, July 19, 1892. For Republican efforts to over-

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on election day in Tennessee, the latter practice was apparently more common there than in states where the tax fell due months or even years before election day.) The extraordinary exertions required to orchestrate all these tasks, however, could be undertaken only when elections were thought crucial enough, and their outcomes sufficiently uncertain to motivate men to help finance and plunge unreservedly into a campaign. If the results of national or state elections seemed either unimportant or unchangeable, political organizations would not work and encumbrances in the election laws would drag many more voters down.

## II

The analysis of Tennessee politics during the late nineteenth century presented here challenges several major contentions put forth by historians and political scientists. Focusing on the fact that the Democrats won the electoral votes of every ex-Confederate state from 1880 to 1920, some historians have pictured the South as "solid" and the Southern Republicans as impotent throughout this period. Oscar Handlin, for example, states that "after 1876, the South was solidly Democratic. . . Republican efforts to maintain a foothold below the Mason-Dixon line were half-hearted and ineffectual . . . The only effective dissent came from among the Democrats."[45] Such statements underrate the potential for political upheaval in the South before 1900, ignore the necessity, from the Democratic standpoint, of suffrage restriction, and miss the major

come the Dortch literacy test by schooling their partisans, see *Memphis Daily Avalanche*, August 2, 7, November 5, 1890. To counter such educational campaigns in behalf of Lucien B. Eaton, the Republican Congressional candidate in the Tenth District in November, 1890, the Democrats put three "ringers" named Eater, Ealey, and Erwin on the ballot. See *ibid.*, November 4, 1890.

[45] Oscar Handlin, *The History of the United States* (New York, 1968), vol. II, 72. Similarly, Richard N. Current, T. Harry Williams, and Frank Freidel state in *American History: A Survey* (New York, 1966), 470, that after 1877, the Democratic party was "the only party in the [South] . . ." Samuel Eliot Morison and Henry Steele Commager speak of the South as "solid" in the midst of the Populist revolt. See their *Growth of the American Republic*, 5th ed. (New York, 1962), vol. II, 334, 338; as well as Converse, "Change in the American Electorate," 307. Obviously, not all historians accept this view of post-Reconstruction Southern politics. See, for example, Woodward's *Origins of the New South*, 75.

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transformation in Southern politics around the turn of the century. Contrast Handlin's observation with a contemporary Democratic view in an 1889 issue of the *Memphis Daily Avalanche:*

> Each year, in order to carry [Shelby] county, we are compelled to do an amount of work not known in any other state. Each man is canvassed, each detail is worked out with painstaking care. A man who persuades a negro to leave town a day before the election is a hero. A man who persuades one to stay away from the polls is a public benefactor. When everything works harmoniously we can win . . . Shelby county is a doubtful county, ranging from 4,000 Democratic to 2,000 Republican . . .[46]

Significantly, the editorial ended by predicting that "The Dortch bill will save us."

Far from moribund, the Republicans posed a manifest, persistent threat to Democratic supremacy in Tennessee at the time the restrictive laws were passed. As the *Knoxville Daily Journal* (counting a few more votes than it could actually deliver) put it, "The [R]epublican vote of the state kept rising and a desperate [D]emocratic legislature jumped at Senator Dortch's practical expedient to reduce the [R]epublican majority in the state."[47]

Democratic desperation reached its apogee in the black belt.[48] Although racist feelings were nearly universal among whites in the late nineteenth-century South, only those who lived in areas where the proportion of Negroes was high actually had to face the prospect they referred to as "Negro domination." In the highlands, Democrats could easily adjust to election losses, for the victors would be neighbors whose socio-economic, religious, and, most of all, racial identities were quite similar to their own. Republican triumph in the heavily black counties, on the other hand, meant Negro clerks, Negro legislators, Negro judges, Negro sheriffs—men of subordinate social and economic position, of separate religious disposition, and, so the white South thought, of an inferior race. It was entirely natural, therefore, that whites from the black belt, often of the planter class, led the movements to restrict the suffrage in the South.

[46] *Memphis Daily Avalanche,* April 1, 1889.

[47] *Knoxville Daily Journal,* July 27, 1892.

[48] For a fuller discussion of this topic and citations to the relevant literature, see Kousser, "Shaping," 59-63.

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Such an analysis of the motives for disfranchisement does not, however, comport with the pictures drawn by many historians. Thus, the authors of a recent text in American history declare that "the white masses demanded the disfranchisement of the Negro." A Southern historian informs us that "egalitarians in the class struggle were most extreme in their opposition to Negro participation in politics."[49] Others state that "agrarians," "white farmers," "small farmer leaders," or disenchanted former Populists, angry at "Bourbon" control of the Negro vote, led or at least initiated the movements to limit the electorate. The "rich whites," "black belt planters," or "conservatives" merely "acquiesced," or, some have it, even opposed efforts to disfranchise blacks.[50] V.O. Key, Jr., propounded a different thesis. Reasoning that any faction in power would fear that the "outs" would appeal to the Negro voter to regain office, Key suggested that in each state, the "ins," whether "Bourbon" or "radical," pushed laws to expunge black voters from the lists.[51] Finally, Converse suggested that in the nation as a whole, it was the "good government" dilettantes who pressed for the Australian ballot and registration reforms to stop fraud and preserve secrecy.

None of these hypotheses—that all whites favored suffrage limitation, that lower-class whites provided the chief impetus and sup-

[49] Richard B. Morris and William Greenleaf, *USA: The History of a Nation* (Chicago, 1969), vol. II, 36; Hampton M. Jarrell, *Wade Hampton and the Negro: The Road Not Taken* (Columbia, S. C., 1949), xi.

[50] Those who propound this theory include Current, Williams, and Freidel, *American History*, 470-471; John S. Ezell, *The South Since 1865* (New York, 1963), 173, 177; Thomas B. Clark and Albert D. Kirwan, *The South Since Appomattox: A Century of Regional Change* (New York, 1967), 74; John D. Stark, *Damned Upcountryman: William Watts Ball, A Study in American Conservatism* (Durham, N. C., 1968), 29; and Allie Bayne Windham Webb, "A History of Negro Voting in Louisiana, 1877-1906" (unpublished Ph.D. dissertation, Louisiana State University, 1962), iv-v. The soured Populists and benevolent conservatives appear in three works by C. Vann Woodward: *Tom Watson, Agrarian Rebel* (New York, 1938), 370-382; *Origins of the New South, 1877-1913* (Baton Rouge, La., 1951), 322-323; and *The Strange Career of Jim Crow*, rev. ed. (New York, 1966), 60-64, 80-81, 89-90. Woodward has more recently deemphasized the role of ex-Populists in disfranchisement, reserving the major role in the suffrage restriction movement for "the bitter enemies of Populism." See Woodward's "The Ghost of Populism Walks Again," *New York Times Magazine*, June 4, 1972, 66. For a more detailed discussion of these viewpoints, see Kousser, "Shaping," 35-58.

[51] Key, *Southern Politics*, 542-550.

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port for it, that the "ins" sought to rob the "outs" of potential black votes, and that a patrician counterelite unintentionally curtailed turnout—gains much support from the Tennessee example. Upper-class, black-belt, conservative politicians led the movement in Tennessee, while the Republicans, who drew much of their support from poor white areas, strongly opposed it. Both sets of "pols" manifestly realized the stakes in the battle. Not only were white masses divided on the issue, they appear to have divided roughly along class lines, with the party of the poor whites against restrictive laws and the party of the planters in favor of them. The Republicans, of course, took that position not only because they needed Negro votes, but also because they found that the laws would eliminate many of their white followers as well. Since any provisions which deleted blacks from the electorate would strike down some whites too, franchise contraction was not merely a racial issue; it was also a class and partisan issue.

The effects of suffrage restriction in Tennessee also cast doubt on Key's *fait accompli* thesis. Contemporary Tennesseans would no doubt have rejected it. Newspaper reports of the returns from the first elections after the 1889–90 legislative session stressed the heavy impact of the new laws. In a Shelby county district, one of several the Democrats carried for the first time since the Civil War, "The magical effects of the Dortch law was [*sic*] nowhere more strikingly manifested than in this precinct, once a Republican stronghold of formidable dimensions." In Hamilton county, the Democrats won the local elections "thanks to the righteous Dortch and registration laws . . ." In Tipton county, "The poll tax requirement cut off nearly one-half of the Republican vote and consequently the Republican or People's ticket was beaten by more than two to one." "Owing to the new registration law a very light vote was cast [in Union City]. The greater portion of the negroes refrained from voting on account of the poll tax law." From Jackson came the report that "The registration in the city and the poll tax law caused a light vote"; in Dyersburg "The poll tax and registration laws have played havoc with the colored vote." "From all over Middle and West Tennessee," the *Avalanche* announced, "reports show that the negro was practically disfranchised by the law compelling every voter to show his poll tax receipt before voting." "From a Democratic standpoint," the *Appeal* found the

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Dortch law's effect "most admirable. The vote has been cut down wofully [*sic*] and wonderfully to be sure, but the ratio of Democratic majorities has been raised at least four-fold . . . The enemy is completely annihilated . . ."[52] Furthermore, the "chief" reason for the decline in turnout in East Tennessee after 1888, according to the *Knoxville Daily Journal*, was the poll tax law. Echoing this Republican paper's analysis, the Tennessee Populists charged that the poll tax disfranchised 50,000 voters.[53]

A careful analysis of the election statistics confirms the impressions of contemporary observers. In 1888, before passage of registration, poll tax, and secret ballot laws, 78 percent of the adult males in Tennessee went to the polls. In the 1890 election, overall turnout crashed to a mere 50 percent. Apparently dispirited by the prospect of contending with the Democrats under the new, one-sided electoral laws, the Republican machines collapsed in 1890. The capture of the Democratic party by the Farmers' Alliance and the evaporation of the GOP seem to have disjointed the majority party's organization as well. Although the presidential contests revivified both parties in 1892 and 1896, the 1895 legislature eliminated the requirement that voters present their registration receipts at the polls, and the Republicans benefitted from the nationwide revulsion against the depression-ridden Cleveland administration, turnout in Tennessee never quite returned to its 1888 peak.[54] Meticulous campaigning and huge contributions of funds to pay for poor voters' poll taxes throughout the state, as well as alleged relaxation of the capitation-tax requirement in several East Tennessee counties raised participation to only 70 percent in the furiously contested election of 1896.[55] Before 1897, four counties

[52] *Memphis Daily Appeal*, August 8, November 5, 6, 1890; *Memphis Daily Avalanche*, August 8, November 4-8, 1890. The *Knoxville Daily Journal*, October 31, 1896, charged that the Dortch law disfranchised 30,000 Republicans in 1890.

[53] *Knoxville Daily Journal*, October 31, 1896; Robert Saunders, "Southern Populists and the Negro, 1893-1895," *Journal of Negro History*, LIV (1969), 242-243.

[54] *Knoxville Daily Journal*, August 4, November 8, 9, 1894; November 2, 1896. Republicans gained added strength by fusing with the Populists for many offices in 1894.

[55] *Ibid.*, November 4, 6, 9, 16, 22, 24, 27, 1896. Newspaper reports of candidates and parties who paid poll taxes for their followers probably represent

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containing 19 percent of the Tennessee population used the secret ballot. For the 1898 election, the literacy test was extended to towns and civil districts in 34 more counties.[56] The disorganization and confusion which must have attended the concurrent use of the secret ballot in towns and the old party ballot in rural areas of the same counties probably further decreased turnout in 1898 and 1900. After 1901, the secret ballot applied in areas containing over 80 percent of Tennessee's populace.[57]

This extension of the restrictive laws, the realization on the part of the Republicans that continued Democratic fraud would prevent GOP victory except in quite extraordinary circumstances, and the abandonment of efforts on the part of national Republicans to carry the electoral votes of the ex-Confederate states apparently account for the further declines in turnout after 1896. It took the ardor of a "Battle of the Standards" to motivate the party organizations to marshall their forces and march them around all the electoral obstacles; when the barriers were raised even higher and the 1896 excitement faded, considerably smaller proportions of adult males managed to vote. Squeezing voters through the ever narrower portals to the voting booth required more of a push than party organizations could provide.

The tremendous impact of the secret ballot law may be demonstrated by comparing voting patterns in gubernatorial elections in the four urban counties with those in the state as a whole from 1880 to 1896. In presidential years during the eighties, turnouts in the cities and the state as a whole were approximately equal. The Republican party carried the combined urban areas, while losing the state, in each of these three elections.[58] In 1890, when

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only the tip of a large iceberg. The *Journal* noted the following expenditures for poll taxes (which amounted to $2 per person): $4,000 by one candidate in Nashville, 1894; $4,000-$6,000 in Knoxville, 1894; $1,000 on election day alone in Knoxville, 1896; $10,000 by the Republicans in the Ninth (West Tennessee) Congressional District, 1896; and $5,600 by Republicans in Fayette County, 1896.

[56] *Knoxville Daily Journal*, November 24, 1896; Arthur C. Ludington, "American Ballot Laws, 1888-1910," in University of the State of New York, *Education Department Bulletin* (Albany, N. Y., 1910), 67-68.

[57] Figures computed from statistics in *Thirteenth Census of the US, 1910* (Washington, D. C., 1913), *Population*, vol. III, 724-735.

[58] Votes from both Democratic factions were combined for this figure to give a realistic idea of the party's strength in 1880.

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voting participation slid by about a third in the state as a whole, it plummeted by two-thirds in the counties covered by the secret ballot. City voting participation lagged 25–30 percent behind the statewide percentages in the elections from 1892 through 1896. Moreover, the GOP dropped far behind the Democracy in 1890 and 1892 in the cities, and only temporarily regained its strength in 1894 and 1896 as a result of the reaction against the party in power during the economic depression and deals with Gold Democrats in 1896. Clearly, the secret ballot cut turnout substantially and hurt the Republicans disproportionately, especially in Nashville and Memphis, where the party of Lincoln had depended heavily on Negro votes.

A comparison of turnout in the 1900 and 1904 gubernatorial elections further strengthens this conclusion about the disfranchising power of the secret ballot. In the counties completely covered by the secret ballot in 1900, the proportionate reduction in turnout from 1900 to 1904 was only 3.6 percent.[59] In those counties free from that literacy test in both elections, the corresponding figure was 3.9 percent. But the proportionate reduction in turnout in counties where the secret ballot's coverage was extended between 1900 and 1904 amounted to a full 20.7 percent.[60]

As Figure I shows, moreover, the new election laws largely accomplished their racist aim. While participation among whites continued at high levels until the secret ballot's extension after

[59] The proportionate reduction in turnout is computed by the following formula:

$$\frac{\text{1900 turnout \%} - \text{1904 turnout \%}}{\text{1900 turnout \%}}$$

Thus, turnout in the third group of counties was 64.1 percent in 1900 and 50.8 percent in 1904, a decline of 13.3 percent, which is 20.7 percent of 64.1 percent. Merely subtracting the turnout percentages in the three groups leads to the same conclusions. The declines in turnout for the three groups are, respectively, 1.0 percent (for the counties completely covered before 1900), 2.6 percent (for the counties never covered), and 13.3 percent (for the counties where coverage was extended between 1900 and 1904). For a further discussion of the proportionate reduction statistic, see Kousser, "Shaping," Appendix C.

[60] Many of the counties in this third group were partially covered by the secret ballot in 1900. If we could separate the returns from the newly covered precincts from those where the secret ballot had been used before, the apparent effect of the secret ballot would probably seem even greater.

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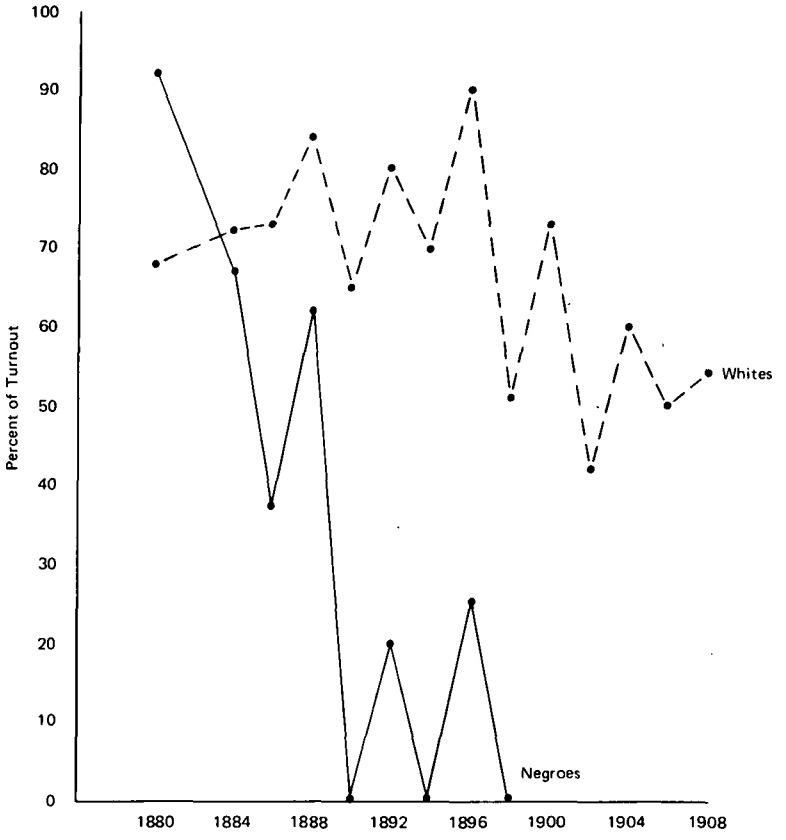


FIGURE I

*Estimated Turnout by Race in Gubernatorial Contests, 1880–1908*
*(See footnote 6 for the estimation procedures employed.)*

1896, black turnout declined dramatically in 1890 and remained very low thereafter. Those Negro votes recorded in 1892 and 1896 seem to have been counted almost entirely for the Democrats. Estimates of Negro turnout after 1896 are approximately zero.

The statutes also had a great impact, especially in the middle and western portions of the state, on the battle between the two chief political parties. Among those voting, the Democratic margin over the Republicans in gubernatorial contests was less than 15 percent in Middle and West Tennessee in 1884. It climbed to 21 percent in 1886 and 1888, at least partly because increases in

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fraud distorted the returns. After nearly doubling in 1890, the margin dipped in 1894 and 1896, for reasons already explained, but jumped again to a comfortable 30–46 percent from 1898 through 1906. Only the rise of the volatile prohibition issue, which shattered Democratic unity toward the end of the decade, gave the GOP a chance for the statehouse.

Statistics from the Congressional races before and after 1888 demonstrate the inability of the Republicans to maintain their strength in Middle and West Tennessee once the new election laws went into effect. During the eighties, the GOP not only carried their two traditional East Tennessee districts, but threatened seats outside the mountain country or at least put on respectable campaigns. After 1888, Democratic Congressional candidates rarely faced serious general election challenges, except in the east. The Democratic margin over the GOP in Congressional races throughout the state amounted to only 2.3 percent in 1888, but jumped to 18.4 percent in 1890, 26.2 percent in 1892, and never fell below 10 percent thereafter.

Other figures also point up the growing Republican party reliance on its East Tennessee stronghold after 1888. Although less than one Tennessee voter in three lived in the eastern division of the state during this period, the Republicans drew from 39.5 to 43.4 percent of their votes from that section in gubernatorial races during the eighties. From 1890 through 1908, a majority of GOP votes came from East Tennessee in most elections, and the figure never dropped below 47 percent. The election laws, then, fulfilled their chief proponents' purposes by largely demolishing the Republican organization in Middle and West Tennessee. Only in the east, where the GOP had much greater influence over the election machinery, did active party opposition to the Democrats persist.

In sum, Tennessee's experience demonstrates at the very least that Key's *fait accompli* thesis is not valid for all the Southern states.[61] The registration, poll tax, and secret ballot laws obviously did depress turnout substantially, especially among Negroes. A bulwark against opposition upsurges in the black belt, the revised

[61] For evidence that the Tennessee experience was typical, and that Key's hypothesis has relatively little validity, see Kousser, "Shaping," especially Chapter IX.

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election code provided a legal, legitimate means of suppressing dissent, a method more subtle, more effective, and less easy to criticize than fraud, violence, and intimidation.[62] Indeed, the blatant modes of putting down the opposition to the Democrats were primarily important as prerequisites for legal suffrage restriction. So long as the Republicans held sufficient strength in the legislature to defeat suffrage laws, so long as they controlled the black belt seats where Democratic proponents of such laws were strongest, no laws limiting the franchise could be passed. Disfranchisement in the South was everywhere a two-stage process: First, Democrats somehow gained sufficient power to pass the necessary laws or constitutional amendments, or call constitutional conventions. Second, those bodies legislated a new political order into existence. While it seriously underestimates the importance of this second phase, the *fait accompli* thesis retains significance because it emphasizes the very complexity, the succession of steps necessary to the political metamorphosis which took place in the turn-of-the-century South.

A final point concerns the timing and locus of inception of the disfranchisement movement. As was noted earlier, many previous historians had focused on Mississippi, a deep-South state with a Negro majority and a largely defunct Republican party in 1890, as the initiator of the process. In fact, other states, including Tennessee, preceded Mississippi and even offered that state advice.[63] In an editorial lauding the effects of the registration, poll tax, and secret ballot laws, the *Memphis Daily Appeal*, which had a wide circulation in

[62] There was still continued influence of violence and fraud in subordinating the opposition after 1890. An independent candidate for sheriff in Fayette county in 1896 was killed by a friend of the Democratic incumbent; Democratic militias continued to prevent Negro voting in close black belt elections; and election officials continued to concoct imaginary totals. See *Knoxville Daily Journal*, August 3, November 22, 27, 1896. Such methods were necessary after 1890 only when the Republicans made frenetic efforts to overcome voting barriers.

[63] This is not to say that Tennessee's example was as influential in other Southern states as was that of Mississippi. The Magnolia State conventioneers discussed many more suffrage plans and did so more publicly than the Tennessee legislators. The point is merely that Mississippi was not the first Southern state to contract the electorate, and that simpler, legislative means of disfranchisement were often approximately as effective as such complex election clauses as Mississippi's.

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northern Mississippi, noted that under the new Tennessee laws:

> It has been demonstrated beyond all peradventure that the ignorant negro, he who is the trusted campfollower of the Republicans, cannot be induced to vote. In the first place only a few register, and of these only a very few are energetic enough to pay their poll tax. If these preliminaries are attended to, only the intelligent among them can vote . . . [E]lections are thrown into the hands of intelligent, tax paying school supporting classes . . . Greater than all else, the system has given a practical, Constitutional and happy solution of the race problem, and for this reason THE APPEAL would earnestly recommend it to the good people of Mississippi, who are about to meet in Jackson for the purpose of making a new Constitution for their State.[64]

When the Mississippi Constitutional Convention adopted a secret ballot as part of the new suffrage clause, one Florida newspaper headlined its article on the event: "MISSISSIPPI CONVENTION—The Dortsch [sic] Law of Tennessee Incorporated in the New Constitution."[65]*

[64] *Memphis Daily Appeal*, August 9, 1890. The order of the sentences in this quotation has been rearranged slightly. The Mississippi Constitutional Convention met three days later. The *Appeal*, February 23, 1890, urged Mississippians to disfranchise the blacks in two stages by adopting an Australian ballot law first to insure the convention's success.

[65] *Jacksonville Florida Times-Union*, September 20, 1890. The ordinance, according to the *Times-Union*, was "substantially a copy of the Dortsch [sic] law of Tennessee."

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# Political Socialization of Children in the USSR

ROBERT W. CLAWSON

For Marx and Engels, the traditional bourgeois child-rearing family was doomed. Following the successful proletarian revolution, children would be housed, socialized, and educated by public organizations. In actual practice most Soviet leaders since the revolution have not regarded the family and early childhood as high priority items for governmental attention. And even those who have, found it difficult to make an impact. This resistance appears to be related to the extremely high cost of enlarging programs affecting the family and early childhood enough to have a definitive impact and to the difficulty of assessing the results. The current Soviet leadership has not appeared interested in these matters and has left policy, assessment, and control up to educational specialists who have become increasingly critical of the results of Soviet child-rearing. One concrete result is that the present level of overt early childhood socialization is probably at its lowest point in Soviet history.

The study of Soviet political socialization has traditionally re-

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ceived less attention than it deserves. Aside from a few tentative probings,[1] the topic has either failed to compel, or simply defied, much systematic inquiry. Not surprisingly, efforts here have been inhibited by the lack of hard data and field research opportunities comparable to those in Western systems. Recently, however, Hahn,[2] Cary,[3] Powell,[4] and others have shown that the concept of political socialization, when systematically applied, is of immense significance for Soviet political research. The purpose of this study is to explore the two basic structures of political socialization relevant to the early childhood experience of Russian children: the family and preschool institutions. Political socialization is, of course, the method through which one generation shapes the political standards and beliefs of following generations. Its end product is a set of attitudes—cognitions, value standards, and feelings—that adults come to hold toward the political system, its various roles, and role incumbents. As a concept, political socialization focuses on the process of induction into the political culture.[5]

[1] See, for instance, Jeremy R. Azrael, "Soviet Union," in James S. Coleman (ed.), *Education and Political Development* (Princeton: Princeton University Press, 1965), 233-57, 265-67; Frederick C. Barghoorn, *Politics in the USSR* (Boston: Little, Brown and Co., 1966), 84-881; Urie Bronfenbrenner, "Soviet Methods of Character Education: Some Implications for Research," 65-73, and "Response to Pressure from Peers Versus Adults Among Soviet and American School Children," 414-420, in Roberta S. Sigel (ed.), *Learning About Politics* (New York, Random House, 1970) and Bronfenbrenner, *Two Worlds of Childhood: U.S. and USSR* (New York: Russell Sage Foundation, 1970).

[2] Jeffrey Hahn, "National Identity as a Discontinuous Political Socialization Factor: The Case of the USSR," paper presented at the American Association for the Advancement of Slavic Studies Meeting, Dallas, Texas, March 1972; and "The Komsomol Kollektiv as an Agency of Political Socialization," *Youth and Society*, Vol. 1, No. 2 (Dec. 1969), 219-239.

[3] Charles D. Cary, "Political Socialization of Soviet Youth and the Building of Communism: Sustaining the Revolutionary Spirit," paper presented at the American Political Science Association Meeting, Chicago, September 1971.

[4] David E. Powell, "The Making of the New Soviet Man," paper presented at the American Political Science Association Meeting, Los Angeles, September 1970.

[5] Richard Dawson and Kenneth Prewitt, *Political Socialization* (Boston: Little, Brown and Co., 1969), 6. Gabriel Almond and James S. Coleman (eds.), *The Politics of the Developing Areas* (Princeton: Princeton University Press, 1960), 27-28.

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## The Historical Experience

### *Ideological Roots*

Portions of initial Bolshevik attitudes toward early childhood care and training were derived from Marx and Engels. Engels contended in his classic, *The Origin of the Family, Private Property and the State,* that the modern family had its basis in economic forces primarily, and was founded on the open, unconcealed slavery of the wife.[6] He refined his economic argument by analogy. The husband could be viewed as the exploiting capitalist and the wife as the oppressed proletariat. Men owned women as instruments for the production of offspring to whom private property could be passed.[7] The remedy suggested by Marx and Engels was the revolutionary destruction of the bourgeois child-rearing family.

Under the communism envisioned by Marx and Engels, women would have political and social equality; no undue burdens would be imposed upon them as a result of child-bearing. Society-at-large would undertake those tasks previously assigned only to women and, in effect, release them for work within the larger society, i.e., industry. They predicted that the care and education of children would become a public task.[8]

Thus Marxist ideology, by stressing equality of the sexes, denied any intrinsic virtues in family upbringing. And by designing a new order, it provided the basis of a very distinctive outlook for early-childhood political socialization. This outlook was to find its principal spokesmen in the "radical-communalist" movement in the first half-decade of the new Soviet regime.

### *The Decentralized Years: 1917-1921*

For those involved in education, child care, family policy, and

[6] Friedrich Engels, *The Origin of the Family, Private Property, and the State* (New York: International Publishers, 1942), 65. The topic recurs in numerous other pieces by Marx and Engels.

[7] *Ibid.*

[8] *Ibid.*, 67, 72-74. Engel's argument was qualified, especially in connection with propertyless workers' families. However, the basic thrust toward destruction remains central. Also, the concept of child legitimacy (considered by Engels to be primarily a mechanism for orderly transfer of private property from one generation of men to the next) would disappear from social use.

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numerous other social activities (officially under the jurisdiction of the Bolshevik People's Commissariat of Enlightenment), the years between 1917 and 1921 were characterized by a degree of total decentralized experimentation bordering on pedagogical anarchy.[9] Three distinct opinion clusters appeared during this period:[10]

1. *Radical-communalists.* On one side were forces, based originally in Petrograd, arguing that early removal of children from the conservative pre-revolutionary atmosphere of the average family and placement in a communal setting controlled by this group would best assure the rapid achievement of total communist consciousness. These radical-communalists advocated the abolition of the family, or at least forcing families to hand over their children to the state. Many advocated total, full-scale political socialization from birth.[11]

2. *Traditionalists.* On the other side were numerous associations, teachers, professors, and educationists who considered the Russian pre-revolutionary system of child-rearing and education to be the ideal model for the future. Many of these people assumed that the Bolshevik regime was only temporary and throughout the 1917-1921 period showed a haughty disdain for the Commissariat of Enlightenment and its policies. Where these traditionalists were strong,

[9] The Commissariat of "Enlightenment" (which can also be translated "Education" in a more narrow sense) had assumed authority from the prerevolutionary Ministry of Enlightenment, supervising the activities of artists, musicians, educators, and a host of others. It was generally known by its acronym, *Narkompros.*

[10] The terms designating groups and opinion clusters are descriptive labels to designate essential strains of pedagogical and sociological thought. Some, like the "radical-communalists" were actual groups known by specific terms (the Petrograd-Left) in their original environment, while others can only be made real by the imposition of organizing categories.

[11] An illustration of this point-blank manner may be found in the following quote from a speech before an educational conference in Petrograd during 1918: "We must exempt children from the pernicious influence of the family. We have to take account of every child, we candidly say that we must nationalize them. From the first days of their lives they will be under the beneficial influence of communistic kindergartens and schools. Here they shall assume the ABC of Communism. Here they will grow as real communists. Our practical problem is to compel mothers to hand over their children to the Soviet government." Cited in James Bowen, *Soviet Education: Anton Makarenko and the Years of Experiment* (Madison: The University of Wisconsin Press, 1965), 36. The speaker was Zlata Ionovna Lilina, wife of G. E. Zinoviev. Lilina was a member of the Petrograd Education Department in 1918.

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Commissariat influence was almost nil.[12] The former advocated traditional family-centered child-rearing.

3. *Progressive-individualists.* In the middle stood those representing the mainstream of educational theory in the new Soviet republic. At first employed mainly in the Commissariat of Enlightenment in Moscow, they included primarily those advocating the "progressive" early childhood socialization and educational principles of people like Tolstoy, Dewey, Froebel, Pestalozzi, and Herbart.[13] The progressive-individualist arguments were "child-centered," a concept stressing freedom for the individual youth to develop himself according to his own personal motivations. Progressive-individualist policies included abolition of "competition" in the learning process, textbooks, exams, grades, diplomas, and traditional discipline. They were empirically oriented, willing to experiment, within certain limits, to achieve the best method for raising and educating children. For most of the progressive-individualists, the role of the family was almost irrelevant. The preschool and school institutions they would create would eventually function so perfectly that no real damage could be done by other institutions.

The Commissariat-based progressive-individualists included a broad range of opinion and talent, most of which was concerned with matters other than early childhood care and education. This group included the Commissar himself, A. V. Lunacharsky, and Nadezhda Krupskaya, Lenin's wife. They slowly reduced the limited but noisy influence of the radical-communalists, and in 1918 a Bolshevik family code was published. While making many changes in family law, this code included nothing about handing children over to the state.[14] During the period of 1917-21, the forces advo-

[12] Sheila Fitzpatrick, *The Commissariat of Enlightenment* (New York: Cambridge University Press, 1970), 34-43, 68-88.

[13] Friedrich Froebel (1782-1852) was a German educator interested in early childhood education. He and others felt that the schools' responsibilities should begin with the child of three or four, and that play activities should be the method for aiding growth and learning. Froebel is usually grouped with Rousseau, Johann Heinrich Pestalozzi (1746-1827) and Johann Friedrich Herbart (1776-1841). Also see Leo Wiener, *Tolstoy on Education* (Chicago: University of Chicago Press, 1969).

[14] Rudolph Schlesinger (ed.), *The Family in the USSR: Documents and Readings* (London: Routledge and Kegan Paul Ltd., 1949). The 1918 code is included in this volume.

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cating the abolition of the family could not gain any effective control over policy.[15] Nor were the radical-communalists successful in forcing total political socialization from early childhood, though this was to find a parallel in the practice of the next decade sponsored by some of the progressive-individualists.

With the military victory of Soviet forces becoming a reality, and as the Bolshevik regime consolidated its power, the traditionalists also were brought under stronger Commissariat influence. The forces of traditional subject-centered education and strong family discipline were to lay dormant for more than a decade, to emerge then in triumph under the banner of Makarenko and Stalin.

At no time during the period of 1917-21 did the Soviet leadership, Lenin, Zinoviev, Kamenev, and Trotsky attempt to intervene unilaterally in early-childhood-upbringing polemics or policy. Lenin was keenly interested in Commissariat affairs, but the various interested groups were allowed to argue out their differences in the press, at conferences and meetings, and within local educational and social organizations. Only when Lunacharsky or other Commissariat leaders asked specifically for policy actions (e.g., dissolving prerevolutionary teachers' associations, closing of church schools) did the leadership provide them with the legal sanctions to obtain their goals. And the leadership permitted an almost completely decentralized educational system to exist during this period. The Ukraine, for example, was not only operationally independent from Moscow, but created and administered its own totally distinct educational and preschool system. The confusion and poor organization of the Moscow Commissariat, under Lunacharsky's policy of extreme permissiveness, made independent action by local organizations that much easier.

Lenin and the leadership certainly desired changes in the preschool socialization pattern and education; the reasons for their reluctance to intervene are not entirely clear.[16] However, the contin-

[15] Kent Geiger and Alex Inkeles, "The Family in the USSR," *Marriage and Family Living*, Vol. XVI (Nov. 1954), 397.

[16] Commenting on the necessity of establishing widespread pre-school centers, Lenin had emphasized that such institutional care would allow women to enter industry and at the same time provide all Soviet children the "shoots of communism" with a politically controlled upbringing. V. I. Lenin, *Veliki pochin*, in *Polnoe sobranie sochinenie*, Vol. 39, 24. N. K. Krupskaya's 1899 feminist book,

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ued lack of funds for child-care facilities and staffs, their lack of personal involvement, even at seemingly crucial times—all of these factors suggest that neither Lenin nor the other Soviet leaders saw the situation as a high priority.[17]

During this relatively brief yet crucial period, educational and early-childhood problems were openly discussed in a spirit of seething controversy and polemic. Those who commented nationally were almost exclusively people specializing in the field, although political leaders often attended meetings and discussions. Between 1917-21, the anarchic Commissariat retained considerable autonomy. Its operational agencies tolerated numerous internal conflicts at various levels of ideology, policy and implementation; Lunacharsky took decisive stands on very few points, employing large numbers of intellectual quasi-revolutionaries. Therefore, the Commissariat could not, in the long run, escape top leadership scrutiny. A Central Committee commission was created in November 1921 to prepare a plan for the reorganization and rationalization of the Commissariat.[18]

### *The Centralized Experimental Years: 1921-1932*

Intervention by the leadership in 1921 and the subsequent reorganization of the Commissariat were largely due to issues unrelated to early childhood political socialization. One principal operational result, however, was that the progressive-individualists finally assumed effective control over policies relating to all educational and family-welfare programs, including early childhood care. The radical-communalists were eliminated in the centralization process, and the traditionalists were forced to recognize that the Bolshevik regime was there to stay.

Primary responsibility for the care and upbringing of preschool-

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*Zhenshina-rabotnitsa*, is often cited as the basic work for Soviet preschool theory. However, this practice appears to be largely ritualistic.

[17] It should be remembered, of course, that during most of this period the Bolsheviks were at war, controlling only a relatively small proportion of the old Empire. It is well known that Lenin was impatient with the war for preventing him from experimenting with running a state; during this time the highest priority items related to defense, but not by Lenin's choice.

[18] *Ibid.*, 192.

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age children remained with the family during this period. In 1926 another family code was established, not unlike that of 1918.[19] Provision was made for the final abolition of legal inequalities between the sexes: the repeal of laws against adultery, bigamy, and incest; the non-recognition of religious marriages; the acceptance of de facto marriages as legally equivalent to civil marriages; and liberal divorce laws. But there was no official threat to the legal position of the family in terms of child-rearing.

Family solidarity was no longer legally protected, but no alternative institutions were available for child-rearing. Few boarding schools or extended child-care centers were established, and those in operation were rarely staffed properly. Experimental agencies that were operational often produced bizarre and unexpected results. Children grew up virtually without discipline, hostile to Soviet authority, and unschooled in the kinds of skills needed in an industrial society.

Early childhood policies, dominated by progressive-individualist disciples of Froebel, Montessori, and a number of American theorists, were child-centered (often in the most simplistic sense of letting children do whatever strikes their fancy), de-emphasizing formal learning and utilizing play activities for individual development. The progressive-individualists were nearly as dogmatic as their opponents. They insisted that experimentation take place only in the light of their own ideals. Communalism, collectivism, traditionalism —none of these forms of socialization and education had any secure and legitimate place in the family and preschool policy during most of this period. While focusing on the development of the "liberated" individual child, they would not tolerate any competition between individuals.

However, the amount of overt sociopolitical information which the preschooler of the 1920s was expected to assimilate grew steadily. Much of the child's time was taken up with social and political information in the "total" manner more closely identified earlier with the radical communalists. This individual revolutionary emphasis, opposed to the communalist or collectivist outlook, was later to be seen by the Stalinists as "Trotskyist" in spirit. The preschool

[19] The Schlesinger volume referred to in note 14 also contains the 1926 family code.

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child was even involved in practical political activity; for example, he participated in various campaigns by marching in demonstrations, making posters, harassing adults (particularly parents), and taking trips to factories.[20]

But by 1932 Stalinism had clearly gained favor. The individualist "Trotskyist" indoctrination, the failure (from Stalin's viewpoint) of the decade of experimentation, Lunacharsky's 1929 departure from the Commissariat—all contributed to a slow and almost imperceptible change in the orientation of Soviet education, preschool care, and family policy. Along with this, much of the experimentalism of the 1920s had, by the early 1930s, been abandoned by harassed teachers and administrators. Tired of the lack of discipline and motivation, they had unofficially adopted many of the principles of the traditionalists.

### *Transition to Stalinism: 1932-1936*

By the mid-1930s Stalin's Central Committee outlawed most examples of progressive-individualism.[21] All experimentalism that still survived was abolished throughout Soviet child care and educational institutions. The progressive-individualists who had resisted the renewed spread of traditionalist practice during the 1930s were removed from positions of influence. In their place sat a new Stalinist group of educationists associated with the environmentalist theory of Anton Makarenko.[22]

[20] Z. P. Zaporozhets, T. A. Markova, and E. I. Radina, "Sovetskaya doshkolnaya pedagogika za 50 let." *Sovetskaya pedagogika*, No. 5, 1967, 11-24. It should be noted that the whole problem of how best to handle political indoctrination of preschoolers was debated throughout the 1920s. Nor was the debate completely silenced either by Stalin's initial consolidation of power or the 1932 RSFSR program.

[21] The decree was specifically designed to eliminate all phases of "pedalogy," a term used to designate the quantifiers within the progressive-individualists. Soviet "pedalogy" was best represented by educationists like Pavel Blonski whose special interest was the measurement of basic intelligence. I.Q. tests, acceptance of hereditary learning trait patterns, and other empirical concepts were abolished. However, the main effect of the application of the decree was to suppress the whole progressive-individualist movement through use of Stalinist terror.

[22] Anton Semenovich Makarenko (1888-1939) was a Ukrainian educationist who founded a series of colonies for juvenile delinquents in the early 1920s. His methods and successes were not acknowledged by the progressive-individualists.

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These "collective-traditionalists" advocated a traditional approach to learning including formal curriculum, texts, examinations, grades for upper levels, strict school discipline, along with early learning for preschoolers. With regard to the family, they demanded the reinvigoration of traditional (in fact, prerevolutionary) respect for parental authority with strong internalized self-discipline. This training would best be accomplished, they argued, by making the family a kind of hierarchical collective in which each member depended for his self-image upon approval from the rest.[23] This principle of collectivism and subservience of the individual to the collective will was at the heart of Makarenko's pedagogical and child-rearing theory. The notion of the blossoming of the individual by following his own whims and fancies was at an end. Henceforth children were to work for group achievement, not individual glory. Everyone, it was assumed, was intellectually equal, and there was no limit to what a collective could achieve. The collective-traditionalists refused, however, to test their assumptions against scientifically collected data. In 1938 a new Stalinist handbook for kindergarten teachers and a volume of kindergarten regulations were published in the spirit of this collective-traditionalist dogma.[24] Neither placed much stress on socio-political indoctrination.[25]

By the middle 1930s Stalin also brought a halt to virtually all programs designed to revolutionize the family, especially in the area of child-rearing. Nearly all of the institutional child care experiments, with the exception of Makarenko-style colonies, were defined as

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He became well known only in the middle 1930s when he published a memoire of his experiences. The progressive-individualists eventually made his life so miserable that he accepted the directorship of the newly created Dzerzhinsky colony under the OGPU (an organization he much admired). His methods caught Stalin's interest and his work soon became the official bedrock of Soviet child-rearing theory.

[23] A. S. Makarenko, *The Collective Family*, ed. and trans. Urie Bronfenbrenner (New York: Doubleday, 1967), xi-xii. The Russian version is available as: *Kniga dlva roditelei* in I. A. Kairov (ed.), *A. S. Makarenko: Sochineniya* (Moscow: Izd-vo. Akademii pedagogicheskikh nauk RSFSR, 1951).

[24] *Narodnoe obrazovanie v SSSR*, 34.

[25] Zaporozhets, *et. al.* This is not to say that the child was free from extracurricular political influence. He was surrounded by reminders of Stalin and most of what Khrushchev was later to call "the cult of the individual." Stalin, the children were constantly reminded, was their navigator through life, a kind of all-seeing, all-knowing demi-god.

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failures. These experiments, poorly financed, limited to the major urban areas of the USSR, and enrolling only a small fraction of the possible population, were scrapped along with other progressive-individualist institutions. Stalin felt that the high-cost, child-centered, experimental agencies and schools did not adequately prepare children in the first Soviet urban generation with socialization and learning experiences to fit them intellectually or emotionally into the new industrial society. And their wider influence was seen as pernicious. Stalin blamed much of the nation's problems on alcoholism, absenteeism, and other breakdowns in labor discipline typical of the 1930s and on the permissiveness of the progressive-individualists and their pedagogical and social theory.[26] The foundation for competent training as well as early socialization toward strict obedience and hard work could be best found, according to Stalin, in the authoritarian family and school of the past.[27]

In sum, economic constraints coupled with the perceived failures of the experimental years, and a renewed appreciation for the family as a key agent of political socialization, resulted in Stalin's eventual intervention in family and school affairs, and a complete turnabout on policy in all these areas. Stalinism had finally reached the kindergarten and the family.

## *Stalinism: 1936-1953*

Stalin's abolition of most of the preschool experiments corresponded with his official recognition of the importance of early family experience for the Soviet child, and signified that the family would be a full partner in the task of bringing up the Stalinist generation. Handbooks for parents based upon collective-traditionalism were written and distributed—though this also was primarily an urban-industrial project. Stalin's principal and continual justification for de-emphasizing the Marxist bias was that strengthening the family was necessary, indeed vital, to promote a stable nation of

[26] Merle Fainsod, *How Russia Is Ruled* (Cambridge: Harvard University Press, 1963), 111.

[27] In Fainsod's words: ". . . The encouragement of authoritarian family relationships . . . finds at least partial explanation in that the habits of order and discipline nurtured in the well-disciplined family circle were expected to carry over to the assembly line." *Ibid.*

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well-trained men and women to aid effectively in the mass industrialization of the Soviet Union.[28] The family, he was saying, was vital for the survival and growth of the socialist homeland and economy.[29]

A number of related legal and policy changes were made by Stalin during the 1930s. The shift in official family policy from the indifference of the progressive-individualists became comprehensive in 1936 with the passage of a totally new and conservative family law. It made abortion and divorce difficult to obtain, strengthened the legal status of the family, and encouraged an increase in the birth rate. More conservative family legislation was enacted in 1944 which made the registration of marriages mandatory and divorce even more difficult than under the 1936 law, while allowing tax and other benefits for large families.[30]

Institutions providing comprehensive preschool child care and education were steadily downgraded as a matter of policy. In the years immediately prior to the Nazi invasion of June, 1941, the works of Makarenko achieved national prominence, partly because Stalin agreed with Makarenko's combination of collective-disciplined respect for authority and his emphasis on traditional pedagogy. However, the operational influence of Makarenko "collectivism" in either preschool or family policy is difficult to document.[31]

[28] "The renewed emphasis on the family was reflected, in a negative sense, in a modification of Soviet law that made the entire family of a criminal responsible for his offense." Zbigniew Brzezinski, *The Permanent Purge: Politics in Soviet Totalitarianism* (Cambridge: Harvard University Press, 1956), 82.

[29] Stalin's continued concern was also related to the long-term Soviet dilemma over manpower shortages. In light of the successive devastating losses from World War I, the Civil War, the collectivization and famines of the early 1930s, the great purges, and the Great Patriotic War, strengthening the family appears to have been seen by Stalin and other top leaders as vital to correct a constant and very gloomy population picture.

[30] Peter H. Juviler, "Family Reforms on the Road to Communism," in Peter H. Juviler and Henry W. Morton (eds.), *Soviet Policy-Making: Studies of Communism in Transition* (New York: Frederick A. Praeger, 1967), 29-60. Makarenko himself was in favor of large families, not for manpower purposes but because it would make the family more like one of his colony collectives. Bowen, 181-183.

[31] Or even in primary school. See, for instance, F. Vigdorova, *Diary of a Russian Schoolteacher* (New York: Grove Press, 1960). Though Makarenko is mentioned frequently in this diary from the 1946-48 period, it is difficult to find evidence that anyone in Vigdorova's school was making it very operational or had done so in the past.

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The Makarenko collective was, evidently, not fully utilized until some years after the war, though his works were supposedly studied earlier by millions of Soviet citizens.

Following the Nazi invasion, Soviet child-care centers of all kinds were turned into emergency housing facilities for millions of homeless children. The quality of the personnel serving in these institutions declined rapidly. The trained staff remaining at their institutions were hard pressed to do anything but feed and shelter their charges. Political socialization virtually disappeared as did almost all early childhood education. By 1944, however, a system of orphanages and displaced children bureaus had reduced the strain on kindergartens and other centers to the point where once again they could concentrate on organizing programs of care and instruction in the collective-traditionalist mold.[32]

In 1953, shortly before Stalin's death, a new official handbook for kindergarten teachers was published which elaborated a broad curriculum; it outlined Stalinist objectives and means to attain them. It also included a relatively heavy dose of Stalinist personality cult and patriotic information to be disseminated along with new emphasis on other activities (including play) which should be used to teach desirable collectivist patterns.[33]

During the Stalinist period, only those pedagogical specialists whose writings and lectures corresponded to the collective-traditionalist pattern were allowed wide national exposure. There was some debate within the Stalinist parameters over such topics as the correct amount of physical training at the preschool level, and other such reasonably innocuous topics, but the debates were typical of most others of the Stalinist period: sterile and totally dominated by regime pronouncements on the subject.

### *The Khrushchev Years: 1953-1964*

The promotion of a stabilized Soviet family continued throughout the Khrushchev years. Nothwithstanding occasional indications of

[32] The Soviet government ordered a general shake-up of child care facilities, Jan. 9, 1944, as it did in numerous other areas toward the end of World War II.
[33] Zaporozhets, *et. al.*

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the old radical-communalist impulse to dissolve it,[34] the family remained secure. "Actually," stated Khrushchev at the 1961 Twenty-Second Party Congress, "the family will grow stronger under communism; family relations will be cleansed finally of materialism and will attain great purity and stability."[35]

The family was "de-Stalinized" only in the sense that it was no longer required to pass on "Stalin cult" information to its children. It still remained the bulwark of Soviet early childhood socialization, imparting, as it had during most of Stalin's time, primarily socio-behavioral patterns in the traditionalist mold (such as, respect for authority, the collective, and self-discipline). Khrushchev did indicate that the future family would have to assume a greater role in political socialization of children; however, nothing significant followed.

Following Stalin's death, numerous changes occurred in the operations of Soviet preschool centers; also, their numbers and capabilities were greatly expanded. Khrushchev showed intense interest in early childhood institutional care as well as the entire educational system. The gradual abandonment of the 1953 handbook resulted in fairly complete de-Stalinization. Some of Khrushchev's suggestions were reminiscent of radical-communalism, especially his promotion of a rapid expansion of the Soviet boarding-schools system. In 1959 the several varieties of day-care centers were combined into one general type: the kindergarten-nursery.[36] Soviet pedagogical specialists were instructed to produce a comprehensive, unified program for the upbringing of children between the ages of 2 months to 7 years (when Soviet children begin primary school). The result of this work was the publication in 1962 of the current handbook for preschool education, the contemporary institutional model for So-

[34] P. S. Strumilin, "Rabochu byt i kummunizm," *Novy mir*, No. 7, 1960, 203-220.

[35] N. S. Khrushchev, *Pravda*, October 20, 1961.

[36] *Narodnoe obrazovanie*, 40. Before 1959, there were a wide variety of child care facilities including nurseries, nursery-gardens, kindergartens (full or daytime), children's playgrounds, and preschool children's homes. Another type, the so-called "departmental" kindergarten for children of plant, factory, and institutional workers, while primarily of importance during the 1920s and early 1930s, still existed until 1959 when they were technically abolished. All of these variations still exist, however.

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viet preschool upbringing.[37]

The Makarenko collective-traditionalist star reached its zenith during the Khrushchev years, and waned in the last few years of the 1960s. Collectives were made central parts of preschool life, and installed wherever young children gathered. But since the early 1960s Makarenko was plagiarized, enlarged upon, given lip service, and departed from, with impunity. The present trend toward scientific early-childhood research and pedagogy is definitely not in the spirit of Makarenko. The rise of this new group of data-oriented "empirical-progressives" willing to question almost anything—including the efficacy of the fundamental Makarenko collective—has ushered in an era that is somewhat reminiscent of the experimental years between 1921 and 1932, with a maximum of participation by specialists and a minimum of intervention by the political leadership. Even Makarenko's handbook for parents is under increased scrutiny. It is clear that the empirical-progressives have learned all they feel they can from Makarenko and have moved on. Popular child-rearing books increasingly mention him only in their introductions, utilizing the standard formula technique previously reserved for Engels and Krupskaya.[38]

During the Khrushchev years, there were continual promises of greatly expanded preschool day-care and boardingschool facilities. Khrushchev and other politicians talked a gread deal about child-rearing, the family, preschool institutions, and especially what Khrushchev seemed to feel was the perfect pattern for the Soviet future: boardingschool for all but the very youngest children. Laymen of all kinds were also encouraged to comment publicly on the subject (through letters to editors primarily) and pedagogical specialists were berated for not taking the lead in innovative research and development. Like so many of Khrushchev's interests and programs, his expanded day care, increases in boarding-school upbringing, and modifications in family life, have been largely ignored in

[37] Henry Chauncy (ed.), *Soviet Preschool Education, Vol. 1, Program of Instruction* (New York: Holt, Rinehart, and Winston, Inc., 1969), a translation of *Programma vospitanie v detskom sadu*, hereafter cited as *Soviet Preschool Education*. This manual was put together collegially (as are virtually all such Soviet volumes). The publishing agencies were the Ministry of Higher Education of the RSFSR and the All-Union Academy of Medical Sciences.

[38] Contemporary Soviet preschool educational research has been influenced substantially by the work of Western theorists. Piaget, Bruner, and Skinner are widely read.

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the public statements and policies of the post-1964 leadership.

Thus after a substantial period of post-Stalin intervention by Khrushchev, involving promises of a utopian future for early childhood care and political socialization, the educationists have again been left to themselves by an uninterested political leadership. Early childhood upbringing once again has dropped to the bottom of the Soviet political leadership's priority scheme. And left to themselves, a new generation of pedagogical specialists has largely scrapped Makarenko and the data-rejecting collective-traditionalists, in favor of empirical research on a broad and inclusive scale.

## Current Dimensions

### *The Family*

Early childhood deliberate political socialization of preschoolers by the state is currently probably at the lowest point in the history of the USSR. The primary reason for this, argue Soviet empirical-progressives, is that such socialization has been exposed as wasted effort.[39] They contend that preschool children simply do not absorb political socialization at any but the most elementary levels. Instead, and amply foreshadowed in the Stalinist 1930s, the essential contemporary responsibility of the family is theoretically to create the proper social outlook which then can be built upon during the many years of later school and peer/primary-group socialization.[40] The central Makarenko theme in modern handbooks on child-rearing for parents is the need for the development of obedience and self-discipline in the early childhood years.[41]

The child should be taught that obedience to adults is absolutely necessary, and that without complete obedience to authority, most especially that of his parents, the child will not be accepted by those closest to him. This most important step leads to what is termed "true self-discipline"—the internalization of a positive behavior pattern which can be generalized by later experiences to include all kinds of authority, from the family to the national political elites.[42]

[39] Zaporozhets, *et. al.*

[40] E. I. Volkova (ed.), *Roditeli i deti* (Moscow: Akademia Pedagogicheskikh Nauk, 1961), 120.

[41] *Ibid.*, 126.

[42] I. A. Pechernikova, *Vospitanie poslushaniya i trudolyubiya u detei v semye* (Moscow: Prosveshchenie, 1965), 7.

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Immediately related to the characteristics of respect for authority and self-discipline is the role of the child in the collective. Every Soviet child, it is hoped, will be taught by his parents that his chief responsibility is not to himself, but rather to those immediately around him. Later this collectivism is concentrated in the school and peer/primary-group situations and used as a multi-purpose instrument of control. The family, however, is charged with little more than introducing him to this concept.

Soviet parents are also responsible for bringing up their children free from superstition and religious teaching. Scientific atheism in their later schooling will be dovetailed with materials on Marxism-Leninism and socialist humanism. However, these subjects do not come until relatively late in the child's development; it is deemed important that children not be influenced early in their lives by religious or superstitious thought, especially through such agents of the consanguine family as grandmothers. The family is exhorted to ignore religious holidays, religious ceremonies (especially baptism), and to participate in the various sectarian holidays and ceremonies which the regime continues to proliferate.[43]

Finally, among the important specific tasks assigned to the family is the primary (and earliest) responsibility for exposing the youngster to the internalization of the "work ethic." The child must be taught the dignity of socialist labor. He should be convinced that there are no inherent contradictions between manual and mental work. And he should be given an elementary sense of responsibility toward the rest of Soviet society which emphasizes the need for each person to work for the best interests of all the people, rather than for personal (and, by its definition, pernicious) economic gain.[44]

*Family responsibilities and the empirical critique.* Sociology, abolished by Stalin, has burgeoned in the post-Khrushchev years.[45]

[43] Cf. David E. Powell.

[44] The work ethic forms a central portion of virtually all handbooks on child-rearing. See, for instance, the various sections devoted to "work training" in *Soviet Preschool Education.*

[45] For an early survey of the new Soviet sociology, see Paul Hollander, "The Dilemmas of Soviet Sociology," *Problems of Communism*, Vol. XIV, No. 6 (Nov.-Dec. 1965), 34-36. Also see the later article "Sociology in the Soviet Union," by Zev Ketz, *ibid.*, Vol. XX, No. 3 (May-June 1971), pp. 22-40. For a translated sample of Soviet sociological research published for the most part

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This increased interest has been accompanied by rapid expansion of the pedagogical literature dealing with the effectiveness of family socialization.

First, most contemporary Soviet children do receive from their parents fairly effective training regarding recognition of authority and the internalization of self-discipline. Second, most Soviet children have a distinct sense of their role in relation to the "collective" at a sufficiently early age for this to be used as an effective device for enforcing group norms on individuals.[46]

Third, it appears that Soviet youth today is less exposed to religious teachings and superstition than ever before. This exposure, however, has not reached standards which are acceptable to the contemporary Soviet ideological elite. The Soviet press is filled with constant criticism of specific instances illustrating family life with significant elements of religious exposure, from baptism to church funerals.[47]

Finally, there is some evidence to indicate that the Soviet family has not performed up to regime standards in terms of imparting the "work ethic." Soviet social scientists have found a tendency for young people, even as late as secondary school, to reflect family guidance away from the work ethic to various "elite ethics." These elite ethics have emphasized a strong positive attachment to occupations which reflect wide public prestige and power. Soviet children, at least partially through the influence of their families, do hold these kinds of nonproletarian occupations in high regard, rejecting manual and agricultural pursuits in impressively large numbers.[48]

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during the first half of the 1960's see Stephen P. Dunn (ed.), *Sociology in the USSR* (White Plains, N.Y.: International Arts and Sciences Press, Inc., 1969).

[46] Bronfenbrenner, *Two Worlds*, 7-14. The typical family environment of the Soviet child is conducive to a personality prone to deference toward authority structures. The saliency of females, the use of the "withdrawal of love" technique in punishing, and the mutually rewarding relationships typical of most Soviet families create a citizen who values the good graces of authority structures. *Ibid.*, 70-74.

[47] *Nauka i religia*, the principal Soviet atheist periodical, devotes an extraordinary amount of space to such warnings as does the daily Soviet newspaper press.

[48] Murray Yanowitch and Norton Dodge, "The Social Evaluation of Occupations in the Soviet Union," *Slavic Review*, Vol. 28, No. 4 (Dec. 1969), 619-641. See also, for instance, V. N. Shubkin, "Molodezh vstupaet v zhizn," *Voprosy filisofi*, No. 5, 1965, 57-70.

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*The Contemporary Family: Problems and Consequences.* While the Soviet family has indeed acted as a substantial socializer and has been a conservative force throughout the varients of the Soviet transfer culture, the family unit has itself been changing—becoming more "modern." It has been changing, however, not so much because of laws and policies written and executed by those most concerned with that institution and the socialization process, but rather due to the dynamic phenomena of industrialization and urbanization. These processes have brought fundamental changes to the Soviet family; as a social device it has become weaker. While the family has decreased in its socializing function, other institutions such as the school should have increased in influence.[49]

One of the basic reasons for the weakening of the traditional family has been the migration of peasants to the urban areas for industrial employment. Separation from the village consanguine family resulted in strengthening the influence of the parents as opposed to the grandparents, or at least the grandmother, or some close relative from that generation. The three-tiered family was typical between the end of World War II and the mid-1960s. It nearly guaranteed strong conservative influences in the socialization process. This is not to say that the handbook's expert opinions were ignored. They were widely considered and even implemented by enthusiastic parents and grandparents. But only partly. Many of the handbook ideas were already familiar in the folkways of the peasantry and many of the new ideas seemed very sound. But it was difficult and stress-producing for many parents, and most grandparents, to abandon practices related to religion, superstition, racial, and cultural attitudes.

Probably the outstanding reason for the three-generational family lasting so long in the urban areas of the USSR was the lack of housing. A child grew up, married, and brought up his children in the same apartment or log house primarily because there was nowhere else to go. However, in the latter half of the 1960s the Soviet regime began to concentrate on increasing urban housing facilities in a crash program which has broken up countless three-

[49] Cf. Mark G. Field and David Anderson, "The Family and Social Problems," in Allen Kassof (ed.), *Prospects for Soviet Society* (New York: Frederick A. Praeger, 1968), esp. 387-390.

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generational families. The drive for privacy, so long frustrated by the regime's various higher priorities, has been increasingly satisfied.

The results of this change in the nature of the family are not considered to be completely positive by Soviet commentators. With the "modernization" has come a significant increase in street crime, juvenile delinquency, hooliganism, drunkenness, and other kinds of antisocial behavior normally associated with urbanization throughout the world.[50] A recently published Soviet statistic, for instance, based on a study of youthful urban delinquents in Leningrad, indicated that some forty percent came from "poor home conditions." "Home," the author stated, "had lost any real meaning for them, and they spent most of their time on the streets."[51] The family's role had not been assumed by any institutional substitute.

However, the rise of the Soviet nuclear family has meant an increased demand for a facility parents in the early experimental days of Soviet power had largely ignored: preschool child care facilities. With the absence of a grandmother or aunt to watch very young children, Soviet working mothers are making increased demands for the use of preschool institutions. Thus the state is becoming an important direct agent of all types of socialization in the early stages of child-rearing. In such instances, it may come to have an impact on children rivaling that of the family itself.

### *Preschool Institutional Care*

Only a relatively small percentage of children in the preschool age population are currently enrolled in state child care centers. In recent years, when the number has been at its highest in any peacetime period, the figure is probably only between ten and twenty percent.[52] Thus, at the present time, experiences of substantial in-

[50] Cf. Robert Clawson and David Norrgard, "National Responses to Problems of Urban Crime: The Soviet Union, the United Kingdom, and the United States," in Harlan Hahn (ed.), *The Police and Urban Society* (Los Angeles: Sage Publications, 1971), 71-93.

[51] Georgi Nadson, "A Very Delicate Job," *Soviet Life*, No. 10 (October 1971), 181. Nadson, a Lieutenant Colonel of the Militia, a jurist, and member of the Collegium of the Leningrad MVD, is credited with writing this informative if brief glimpse into an area which is rarely exposed for foreign consumption.

[52] Susan Jacoby, "Who Raises Russia's Children?" *Saturday Review*. August

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stitutional political socialization do not occur for the majority of Soviet children until about the age of seven, when they enter primary school.

The current handbook (titled, in its English translation, *The Program of Education in the Kindergarten)* issued in 1962, was given two post-Khrushchev updating revisions in 1965 and 1969.[53] It envisions very little overt political indoctrination at the preschool level. Early in the handbook, the weighty responsibilities of the kindergarten teacher's role are discussed, especially in relation to active participation in the building of communism:[54]

> The education of future citizens of a Communist society requires from the teachers of preschool institutions the gradual perfecting of pedagogical knowledge, study of Marxist-Leninist theory and the new program of the Communist Party of the Soviet Union, participation in the political life of the country, and the observance of the principles of the moral code of the builders of communism.

In addition, the teacher is reminded of the importance of select political tenets for moral training:[55]

> Bringing up the child to love his native district and to respect and love the founder of the Soviet government, Vladimir Illich Lenin, is of great significance in his moral development.

The above admonitions to the kindergarten teacher effectively exhaust the explicit political content of the handbook. Emphasis throughout the volume is on molding basic character traits, personal attitudes, and habits which should lay the correct foundation for later, more overt, political socialization provided by the schools and communist youth groups such as the Octoberists, the Pioneers, and the Komsomols.

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21, 1971, 41-43, 53. Bronfenbrenner states that the figure may go as high as 50% in Moscow, "which probably has more facilities than any other Soviet city. . ." in *Soviet Preschool Education*, ix.

[53] The RSFSR revisions of 1965 were very minor. The 1968 revisions, taking note of contemporary research, introduced more intensive development in most spheres. Physical training requirements, however, were revised downward. See A. Zaporozhets, "Detskim Sadam—Novaya usovershenstvovanaya programma," *Doshkolnoe vospitanie*, No. 11, 1968, 23-27.

[54] *Soviet Preschool Education*, 5-6.

[55] *Ibid.*, 2.

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The handbook model notwithstanding, there are other significant elements of what the Soviets (more often at later stages of education) usually label "patriotic training" included in the preschooler's day care experience. The most prominent feature, and one which will persist throughout the child's education, is the omnipresence of Lenin. There are pictures of Lenin in every classroom, busts sit on felt tablecloths in "Lenin Corners," and the preschoolers are told stories about "Our Lenin," or "Uncle Lenin." "Learn to live as Lenin lived," they are told. Soviet children are taught to love Lenin as Christian children are taught to love Christ. Indeed, as one student of the Soviet preschool has commented, Soviet patriotic training is very much like religious training in European or American environments. This type of noncognitive learning is undoubtedly extremely effective in achieving its objectives.[56]

Preschoolers are also exposed to different, limited patriotic materials. Military and other historical heroes (including many from prerevolutionary times) form the core of historical examples of behavior worthy of emulation.[57]

*Preschool Population and Facilities.* In order to evaluate the impact of preschool socialization experiences, it is essential first to determine the character of the relevant population. It is a common assumption among Soviet observers that major portions of the preschool population are excluded. This lack of participation appears to have several dimensions.

First, although a major portion of Soviet preschool care is subsidized through the system of social benefits, parents are required to pay for their children's attendance in accordance with their family income. The sliding scale maximum ends at a monthly 120 rubles per person, per family. All nuclear families making over 240 rubles per month, for instance, are eligible for the same payments. Thus, the more a family makes over 240 rubles per month, the better position it is in to send its children to preschool institutions. So in a sense preschool fees have been and continue to be regressive costs. The implied result is that children from higher-income families are

[56] Susan Jacoby. This type of unconscious socialization, because it is noncognitive, is the most difficult to measure.

[57] Including, for example, versions for children of Lermontov's *Geroy nashego vremeni* or Tolstoy's "Kavkazskiy plenik."

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over-represented in the preschool population; at the same time, low-income families pay virtually nothing, and children from such families may also be over-represented.[58]

Second, major portions of the Soviet population are denied access to preschool facilities due to inequality in the distribution of kindergarten-nurseries and other institutions. Within individual republics, oblasts, and even from one area to another in Soviet cities, significant differences in the availability of facilities point to the extraordinarily poor planning which has plagued every aspect of preschool construction and staffing. Allocated monies are not spent, planned places are not provided, and existing facilities are often simultaneously overcrowded and underutilized.[59]

Third, it has been estimated that at the end of 1971, when the Soviet preschool population was some 9,400,000, Soviet educational and public health agencies had about 1,000,000 pending applications for admission to preschool facilities.[60] But these figures are deceptive; while there are waiting lists for ages four through seven, many facilities have open places for children from 3 months to 3 years,[61] suggesting that the home environment for infants is preferred by mothers over that of institutional care.

Fourth, the quality and very existence of the preschool is often determined by the nature of local industry and other types of enterprises. Many preschool facilities are subsidized by individual enterprises for the use of their employees and in fact are part of the "fringe benefit" packages offered prospective job hunters. Where

[58] V. Basov, "Doshkolnoe vospitanie i byudzhet," *Doshkolnoe vospitanie*, No. 4, 1967, pp. 95-97. Fee structures for attendance at preschool institutions (established in 1948) are extremely complex, involving percentages of income, reductions for certain types of families, etc. A complete table is published in English translation in Norton T. Dodge, *Women in the Soviet Economy: Their Role in Economic, Scientific, and Technical Development* (Baltimore: Johns Hopkins Press, 1966), 81, 86. Also, see Robert J. Osborn, *Soviet Social Policies: Welfare, Equality and Community* (Homewood, Illinois: The Dorsey Press, 1970), 58-59.

[59] In 1966 for example, 90,000 planned places were not opened; 30,000,000 allocated rubles were not spent for the assigned construction. See Basov, *op. cit.* Also see Susan Jacoby's quote from Natalya Baranskaya, *op. cit.* For underutilization, see note 61, below.

[60] Editors, "Dlya samykh malenkikh," *Pravda*, December 28, 1971, and D. Novoplyansky, "Ochered," *Pravda*, July 17, 1971, p. 3.

[61] Susan Jacoby. This group is usually referred to as being of "nursery age."

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the economic enterprises are few or impoverished, the quality of the preschool institutions will often be low.[62]

Fifth, there is also a geographic-ethnic bias to preschool availability. The Central Asian republics are the most obviously deprived.[63]

Finally, the urban-rural division that exists in so much of Soviet life also characterizes preschool care. Rural facilities that do exist are often run by unqualified personnel and usually operate for only a short time during each year. No significant improvement in the institutional distribution appears to be likely in the near future.[64]

*Preschool Political Socialization and the Empirical Critique.* The population that does attend effective Soviet preschool institutions is thus a rather special one. What then are the consequences, in terms of political socialization, for those who do attend? Soviet authorities, on whom Western analysts largely depend for data, have pointed out numerous defects in the contemporary system of preschool upbringing, as well as in the specific area of political socialization.

In the late 1960s and the early 1970s a kind of stocktaking oc-

[62] Osborn, 61.

[63] Editors, *Pravda.* The Turkmen and Uzbek republics have been the most heavily criticized for falling far behind even other Central Asian republics in this task. This example, whatever its specific cause, follows a standard pattern. Central Asia is deprived almost across the board.

[64] For a brief commentary on rural facilities, as pointed out by Susan Jacoby, see Andrey Amalrik, *Involuntary Journey to Siberia* (New York: Harcourt Brace Jovanovich, 1970), 171-173.

Soviet figures on enrollment in regular preschool facilities give quantitative evidence on the imbalance:

| Year | Percent of Total Enrollment in Urban Facilities | Percent of Total Enrollment in Rural and Suburban Facilities |
|---|---|---|
| 1945 | 73% | 27% |
| 1950 | 83% | 17% |
| 1955 | 82% | 18% |
| 1960 | 84% | 16% |
| 1965 | 81% | 19% |

These figures, derived from Osborn, do not cover examples of "seasonal" preschool establishments which the Soviets sometimes cite perhaps to inflate their enrollment figures. If these latter rural facilities are included, states a 1969 article in *Ekonomicheskaya gazeta* (cited by Osborn), about 45% of the approximately 30 million preschool children were enrolled in 1968.

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curred within professional educational circles. The results are being frankly discussed in books and journals. The educators acknowledge that very little sound Soviet research has ever been done on early childhood personality development. They contend that preschool institutions still often attempt to impart complicated sociopolitical information to small children—a process from which the youngsters cannot benefit because such knowledge is remote from their actual experience.[65] Furthermore, while the "collective" has been used as a prime agent of political and moral socialization for many years, its basic nature has never been sufficiently and scientifically assessed.[66] Published Soviet experiments concerning the use of playtime, for example, have indicated that there arise, within what Soviet educators had felt were purely "positive" play collectives, relationships which are essentially negative (such as domination by others and unresolved conflicts).[67]

Soviet research has also resulted in a new assessment of "work education" in the preschool environment. Many Soviet critics feel that it has not resulted in a widely internalized "ideal" attitude toward work among this very young group.[68]

Among the many other problems which have surfaced for public debate, perhaps the most important here concerns the correlation and mutual influence between family education and socialization and that of public preschool institutions. This relationship, the public was told, has never been properly investigated.[69]

Related to the quality of preschool education and political socialization is the problem of the quality of the personnel. In 1967 about 70 percent of the preschool teachers in the USSR claimed to have higher or secondary special education. But about 10 percent lacked even minimal educational qualifications.[70]

[65] Pedagogical research summarized in Prokofiev, *et.al.*, 55.

[66] *Ibid.*, 57.

[67] Summarizing the research of A. P. Usova and others, *ibid.*, 58-59. Usova herself is very near retirement. These studies are apparently being carried out by junior researchers under her general direction.

[68] *Ibid.*, 59. Also see note 48. "Work education" principally involves learning to tie shoes, hang up clothes, and clean project areas. There is hardly any reason to expect this to result in a widely internalized ideal attitude toward work.

[69] *Ibid.*, 60.

[70] Basov. One may imagine that the percentage of "casual" people is much higher in the rural preschools than in the urban environment; however, the general figure of 10% is probably an underestimate.

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Soviet mothers seem remarkably uninterested in preschool political socialization, moral education, or patriotic training. In a 1969 survey, 66.6 percent of the working mothers included in the sample indicated that they sent their young children to preschool facilities simply because there was no one else suitable to care for them. Only 23.7 percent indicated that they had enrolled their children primarily because they felt it would provide a better social upbringing than could be provided by another means (including the family).[71]

Thus, for some time now, many of the stereotypes and dogmatic principles of preschool care have been undergoing challenge through the publication of empirical research. The old givens are no longer simply articles of faith and the results have not been good enough. In this process, of course, the political and social goals of this initial socialization and education experience are also being reevaluated.

### *The Specialists and the Politicians*

Those Soviets who presently comment on current early childhood problems are almost exclusively experts in preschool education and family affairs, and reporters who specialize in early childhood subjects. Politicians of the post-Khrushchev era rarely have touched on political socialization of preschoolers (though they are never hesitant to harp on older age-group failures and triumphs). Amateurs are not presently encouraged by the political leadership to make national pronouncements on early childhood matters, as they had been under Khrushchev.

The contemporary Soviet leadership has not ignored the problems of the Soviet preschool upbringing and training completely. Some of the aforementioned anomolies of planning allocation and implementation have been criticized at various times by top Party and state officials.[72] It is clear, however, that preschool care and political socialization are hardly viewed as crucial by the top leaders. The regime has given its tacit permission for educational and family specialists to determine political socialization policies for the preschool population. These specialists have inaugurated a vast experiment to determine the net worth of the present neo-Khrushchevian system.

[71] Cited in Susan Jacoby.
[72] Editors, *Pravda*.

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*Implications for Soviet Political Behavior*

The Soviet government has fairly consistently maintained a relatively aloof attitude toward the family as a child-rearing unit, despite beliefs to the contrary. This hands-off policy (or in Stalin's case, reinforcement) has undoubtedly been responsible for the tenacity with which many pre-revolutionary behavioral and political attitudes have remained rooted in Soviet culture. The various means utilized to influence parental child-rearing methods, such as handbooks, classes for parents, newspaper and journal articles, have primarily been of a passive nature. Until recently, the only method specialists had at their disposal for assessing the effect of the family has been to look at the semifinished product, presented at age seven to schools for further political socialization. By that time, however, the damage had been done, and improper sociobehavioral characteristics were deeply ingrained.[78]

But why relative autonomy allowed early childhood training and the family? As has been recounted, leaderships through the years have chosen to let them remain relatively free from interference; even Stalin did not force them into his own mold until relatively late in his consolidation of power. Khrushchev was clearly more interested than former leaders; but he was also surprisingly ineffective when dealing with virtually all phases of early childhood political socialization. The ineffectiveness appears to be related to the extremely high cost of expanding the system to reach larger numbers of parents and children. Another obstacle to greater effectiveness has been the traditional Soviet biases against behavioral research and, given the esoteric nature of the subject, the difficulties of assessing the results of any given program. Thus, having to take money away from such areas as heavy and even light industry and defense production for preschool socialization programs, which at best defy meaningful political assessment, has not been sufficiently attractive to involve any but the most adventurous Soviet leaders.

While it is clear that most contemporary empirical-progressive theorists favor development of sociobehavioral patterns by the

[78] There is a significant literature which stresses the central importance of the family in the political socialization of pre-adults. See, for example, H. Hyman, *Political Socialization* (New York: The Free Press, 1959) and A. Campbell, G. Gurin, and W. Miller, *The Voter Decides* (Evanston, Ill.: Row Peterson, 1954).

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family and preschool institutions as preparation for later intensive school and communist youth-group political socialization, the methods at their disposal are limited. These include moral suasion and public presentation of empirical data.[74] They evidently have been unable to convince the Soviet leadership of the importance of early childhood experiences for future political attitudes and behavior patterns to justify receiving greater support.

Any speculation about the impact of all of this on future Soviet political behavior must be made with reference to beliefs about the importance of early childhood experiences in preparing the citizen for the political environment of which he is to become a part. The initial family experiences and training obviously affect further socialization by other agents such as the preschool and peer groups.[75] In light of this role, it is important to speculate on future regime policy toward the family and other possible alternative institutions.

First, the likelihood of any substantial change in future specific Soviet policy toward the existence of the family is slight, if only because the radical communalist impulse seems to be rare in both the population as a whole and within the ruling elite. In addition, the ideological roots found in Marxist literature on the child-rearing family have been ignored by virtually everyone who has ever held top political power in the USSR. At the same time, drastic changes in the availability of preschool day care facilities appear unlikely for reasons alluded to earlier: the extremely high relative costs and attendant problems of effective assessment.

Second, in the immediate future, during the Brezhnev leadership, changes in the family's role as political socializer do appear likely. They will happen, however, more as a result of urbanization—changes in housing patterns, family planning, income distribution, and alternative models of child-rearing—than from direct leadership intervention in family affairs.

Third, while the preschool day care population can be expected to increase gradually, as long as the empirical progressives are domi-

[74] This is applicable to the vast majority of familial situations falling broadly within accepted deviational patterns. Those outside the normal curve may find themselves the target of overwhelming social and legal action.

[75] Kenneth P. Langton, *Political Socialization* (New York: Oxford University Press, 1969), 21-22.

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nant, it can be expected that overt preschool political indoctrination will be minimal. Buttressed by their published evidence, the empirical progressives say that very young children simply do not absorb complicated ideological information.

Finally, the total profile of Soviet political behavior for the present generation, to the extent that it is rooted in early childhood socialization, is more likely to be influenced by the indirect effects of urbanization than by regime-sponsored, deliberate political socialization.*

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# British Political Biography as History

STEPHEN E. KOSS

On the evening of 5 June 1923, "The Art of Biography" was spiritedly debated at the London School of Economics. The honors were shared by A. G. Gardiner, who had recently published a double-decker life of Sir William Harcourt, and by Philip Guedalla, who made his reputation with books on Wellington, Palmerston, and Napoleon III. The chair was taken by H. H. Asquith, an autobiographer whose volumes were twice as many, twice as heavy, and not half so popular as his wife's. With Guedalla's concurrence, Gardiner gave generously of his advice to any prospective biographers in the audience. Boswell and Carlyle, he declared, had achieved immortal successes because each had been "anxious to do his best for his subject"; Lytton Strachey, on the other hand, was too concerned with parading his own wit, and, consequently, never rose above caricature. "Every biography," he insisted, "like every good picture, was a portrait of two persons—the writer and its subject"—and, in the vast majority of cases, "it was

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wise for the . . . biographer to appear as little as possible, definitely and specifically, in person."[1]

More than a half-century has passed since that symposium, and political biography—the sub-species of greatest concern to the three participants that evening—has keenly reflected the changing times: one need only refer to the studies of Asquith, which have been written at regular intervals, to perceive the fundamental transformations in content, method, and intention.[2] Yet the form, in its essentials, continues to flourish, and Gardiner's observation retains its basic validity.

A student of modern British history may plead, without too much self-consciousness, that political biography has occupied a unique place in the political culture of that society. Partly explained by the distinctive tastes of the British reading public, the phenomenon owes much to the fact that, at least since Victorian times, biography has attracted many of the most celebrated names in English letters and public life. There is a long tradition of politicians who have written biography to pay homage to their ideological forbears, and, implicitly, to justify their own conduct: Lord Rosebery on Chatham, Morley on Gladstone, Winston Churchill on Lord Randolph, Julian Amery on Joseph Chamberlain, Michael Foot on Bevan, and Roy Jenkins on Asquith, to name only a few. Similarly, dutiful progeny have been impelled to take up pens to celebrate or redeem the reputations of members of their families: Churchill is again an obvious case in point. In other hands, biography has been astutely employed to rekindle party loyalties, champion social causes, and, at certain critical junctures, to propagate patriotic values. Some of the most successful practitioners of the craft have been outside the universities: veterans of Fleet Street, civil servants, and other "amateurs" whose best credentials are the works which they have produced.

A genre with its own conventions, virtues, and limitations, biography is more intimately allied to historical studies than some

[1] *Morning Post*, 6 June 1923.

[2] Cf. J. A. Spender and Cyril Asquith, *Life of Lord Oxford and Asquith*, 2 vols. (1932); R. B. McCallum, *Asquith* (1936); Roy Jenkins, *Asquith* (1964); the present writer is now at work on a reassessment of Asquith in the light of information which has newly become available.

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modern social scientists would concede or, indeed, than some popularists would find convenient to acknowledge. The line between the two disciplines is at best a thin one, and one easily transcended. Lytton Strachey's dictum that "Human beings are too important to be treated as mere symptoms of the past" reflects a noble sentiment, but not much else. It is difficult to see how one can illuminate the figure in the foreground without shedding light on the background against which that figure operated. Nor is it apparent why one should try. A self-respecting biographer must plunge deep into the history of his subject's period, if only to distinguish between the particular and the universal, and to evaluate testimony. In the process, he cannot help but contribute to an understanding of some aspect of the society to which his subject belonged.

Like other forms of historical writing, biography—political and otherwise—is essentially a product of the nineteenth century. The Victorians collected "great lives" as they did bric-a-brac, and several large publishing houses owed their early fortunes to biographical series in which statesmen wrote about literary figures and *vice versa*. As members of a society that celebrated the glories of individual enterprise, the Victorians did not believe that their public men and women were properly laid to rest until they had been entombed in two or more massive volumes.

As in other spheres, the new century witnessed a reaction. The Edwardians specialized in collections of portrait sketches, each designed to capture the quintessential qualities of a personality in a few piquant pages. Those who tried their hand at the game included Gardiner, W.T. Stead, Harold Begbie, Herbert Sidebotham (all journalists), as well as Lord Bryce and Churchill. Meanwhile, a younger generation of biographers, for whom Strachey set the tone, attempted to show that, atop every pedestal, stood a figure with feet of clay. The thirties brought a spate of terse biographical works, skeletal in structure and stinting in their value judgments. In more recent decades, we have seen efforts, as yet more valiant than successful, to apply Freudian precepts, and, to a notable degree, sociological techniques. There has been welcome evidence, too, of the interplay between biography and the activity which, in American universities, arrogates to itself the designation of "intellectual history."

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## I

A recent crop of scholarly and semi-scholarly biographical works —focusing on Campbell-Bannerman, Wellington, Balfour, Lloyd George, Macaulay, and John Strachey—illustrate the vitality of the form, the multifarious uses to which it can be put, and, in no small measure, certain recurrent problems. By and large, however, these books justify the continued interest in "great lives" not only as an approach to history, but also (and more importantly) as a valuable component of historical studies.

To argue defensively, one may begin with a book that fits only marginally into the category: H. C. G. Matthew's evaluation of *The Liberal Imperialists*.[3] Although its subject is a movement, partly political and partly ideological, its focus is inevitably upon the men who propounded its theories and who attempted to implement them in the parliamentary arena. In particular, Liberal Imperialism expressed the doctrines and ambitions of Asquith, Sir Edward Grey, and R. B. Haldane, each to an extent a disciple of the wayward Rosebery, whom they hoped to restore to the leadership of the Liberal party and the nation. There is much to commend in this incisive account, although, like several other recently reincarnated doctoral dissertations, it compartmentalizes "action" and "theory" to its own disadvantage. At the same time, it creates an impression that is at the least unfortunate and possibly misleading. Eschewing a biographical approach, the author has concentrated upon one, relatively brief episode in his subjects' careers, when their strategies were hopelessly self-defeating and their performances were inglorious. The narrative abruptly ends when the "Limps," as they were derisively known to their critics, had shot their bolt, and Sir Henry Campbell-Bannerman had established his effective mastery over the party. But Asquith, Grey, and Haldane were far from finished, and the next decade found them in possession of the three vital organs of government: the premiership, the foreign office, and the war office. Indeed, there were Liberal fundamentalists like Morley who subsequently complained that the Liberal Imperialists and their creed had ultimately triumphed. One must,

[3] H. C. G. Matthew, *The Liberal Imperialists: The Ideas and Policies of a Post-Gladstonian Elite* (Oxford, 1973).

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therefore, bring to Matthew's book a familiarity with the personalities about whom he speaks, if one is to interpret his short-term pronouncements in the light of long-term developments.

Campbell-Bannerman, the genial Scotsman who outfoxed the Liberal Imperialists, fares better in a full-scale life by John Wilson.[4] A distinct improvement on J. A. Spender's two-volume treatment (1923), which was sadly out of temper with its subject, Wilson's portrait vividly brings to life the other "Unknown Prime Minister" of this century, and it might well have borne that title had Robert Blake not usurped it for his 1955 book on Andrew Bonar Law. Unlike those with whom he had to contend, Campbell-Bannerman was a man with no driving ambition, but an unfailing sense of the practical in politics. Unashamedly lazy, he did not wait on events so much as he allowed events to wait on him. He gave stout service to a succession of Liberal ministries, and, in 1899, the party leadership fell to him more or less by default. His was the thankless task of holding together the feuding Liberal factions during the stormy days of the Boer War. Integrity and equability compensated for a notable lack of dynamism, straightforward speech for his admitted oratorical deficiencies. In the Cabinet-making of 1905, he showed his mettle, welding the disparate elements of Edwardian Liberalism into an effective tactical unit. While Wilson offers little that is novel in the way of analysis, he has assembled his material with sound judgment. He is obviously as fond of "Good Old C.B." as were those who enjoyed personal contact with him, and his book, like other labors of love, occasionally suffers from excess. But, by providing a workmanlike appraisal of an eventful career, he has elucidated political attitudes and alignments over an extended period.

Like Wilson, Lady Longford is neither an academic nor a party propagandist. She addresses her work perhaps to a wider audience, but she is not unmindful of scholarly canons. Her reputation as a biographer, established by her study of *Victoria R.I.* (1964), was enhanced five years later by a portrait of the Duke of Wellington

[4] John Wilson, C. B.: *The Life of Sir Henry Campbell-Bannerman* (New York, 1974). Campbell-Bannerman (1836–1908) was a Liberal M.P. from 1868 to 1908. Elected to lead the party in 1899, he served as Prime Minister from 1905 to 1908.

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during his "Years of the Sword." Her second and concluding volume on the Iron Duke[5] comes as something of a disappointment, if only because its predecessor had inspired such high hopes. Based largely on research in the more obvious manuscript collections, the narrative is punctuated with anecdotes that are usually more entertaining than illustrative; worse, they are frequently obtrusive. Wellington himself must bear part of the blame for the volume's imperfections. After he quit foreign soil and arrived on the muddier battlefields of Tory politics, the "Prince of Waterloo" became a less accessible figure. Although there were nervous apprehensions among some contemporaries that he would go the way of his continental counterparts, he willingly accepted parliamentary constraints. Yet he had little comprehension and less sympathy for the vast problems that afflicted a rapidly industrializing society. As a "Pillar of State," Wellington was important not so much for what he achieved as for what he came to represent, often unwittingly. Lady Longford rightly emphasizes his "sublime position"—or his "special circumstances," as Lord Liverpool more temperately put it—but she is not always successful in assessing its symbolic value. British politics, she shrewdly argues, represents an "eternal triangle between country, party, and self." Her chief difficulty, like that of her subject, is one of proportion. We are left with a strong impression of Wellington's overriding sense of responsibility, but with only a vague understanding of for what or to whom he held himself responsible, and for what purpose.

A. J. Balfour was a Tory statesman of later vintage and comparable durability. More creative than Wellington, he has nonetheless tended to be denied a pedestal in the party pantheon, less because he led his side to crushing defeat in 1906 than because he had the temerity to seem not to care. Rational to the point of cynicism, he was a man with as many enemies as antipathies, whose few parliamentary friends sat inconveniently on the Liberal benches. Yet, even in those circles, he was distrusted. The best that Lord Crewe could say for him was that Balfour "was an honest

[5] Elizabeth Longford, *Wellington: Pillar of State* (New York, 1972). Arthur Wellesley, the first Duke of Wellington (1769–1852), led his forces with equal authority (and possibly equal disdain) on the battlefield and in parliamentary maneuver.

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man with a dishonest brain." There is no shortage of books on Balfour's variegated career, but Professor Sydney H. Zebel more than justifies the case for another, for which he has had access to documents not previously available. As sober and methodical as the man himself, this "political biography"[6] is particularly strong on Balfour's early and last years. There is a rewarding examination of his tenancy at the Irish Office, where he gave indisputable evidence of his ability as well as a clear indication of subsequent attitudes and policies. There is an equally vigorous discussion of the political and intellectual background to the Balfour Declaration on Palestine. Perhaps for reasons of economy, intervening episodes sometimes receive only cursory attention. One might have hoped for a more sustained analysis of the Tariff Reform controversy, which bulked so large during Balfour's unhappy premiership. For this section, the author has relied rather too heavily on Elie Halévy and other secondary works which are to an extent outdated: for example, few today would hold to the view that the 1902 Education Bill owed its inspiration to the Fabian Socialists. Published under the auspices of the Conference on British Studies, an organization of North American scholars, this comprehensive volume attests to the growing trans-Atlantic contribution to modern British historiography.

Too quick to disclaim scholarly qualifications or intentions, John Grigg has achieved a success which even the most exacting academic might well envy. With a well-paced volume on *The Young Lloyd George*,[7] he has embarked on what will surely rank as the definitive investigation of that fascinating, often exasperating individual. Although Grigg does not share his subject's national heritage, he is a seasoned political journalist and a former parliamentary candidate. An added advantage, for what it is worth, is that Lloyd George knew his father as a member of the Garden

[6] Sydney H. Zebel, *Balfour: A Political Biography* (Cambridge, 1973). Arthur James Balfour, later the first Earl of Balfour (1848–1930), was a Conservative M.P. from 1874 to 1922. In 1902, he succeeded his uncle, Lord Salisbury, as Prime Minister, retaining wide influence long after his three-year tenure at Downing Street had come to an end.

[7] John Grigg, *The Young Lloyd George* (London, 1973). David Lloyd George, later the first Earl Lloyd George (1863–1945), entered Parliament in 1890, and, as Prime Minister (1916–22) was celebrated as "the man who won the war."

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Suburb. The present installment concentrates on the period of the sorcerer's apprenticeship, before this young Welshman on the make emerged fully to national prominence. "My supreme idea is to get on," Lloyd George proclaimed to Margaret Owen of Mynydd Ednyfed, whom he was then courting. "I am prepared to thrust even love itself under the wheels of my Juggernaut if it obstructs the way." His candor, reflected in many of the letters which Grigg quotes, is at once both refreshing and terrifying. Neither Lloyd George's first wife nor, for that matter, his political associates could say that they had not been amply warned. It is not only a commanding personality which Grigg reveals, but also the diverse forces that continually spurred him onward, the parochial interests from which he constructed his electoral base, and the content of the Radical creed which he articulated. An affectionate portrait, it is by no means a whitewash, and its chief asset is a literary style as brisk as its hero's advance.

Literary effort, being a solitary pursuit, is less easily depicted by a biographer than the performance of public duties. That, in no small measure, accounts for the length of John Clive's *Thomas Babbington Macaulay*,[8] which lavishes five hundred pages on the first four decades of its subject's life. With a restraint that contrasts effectively with Macaulay's florid prose, Professor Clive delivers substantially more than his modest subtitle, "The Shaping of the Historian," would lead the reader to expect. Here is an examination, candid but respectful, of a complex personality; at the same time, we are provided with a thoughtful survey of the social conditions and intellectual attitudes to which Macaulay's published works were, at least in part, a response. Making use of family papers, including a journal which G. M. Trevelyan kept locked away from the prying eyes of "the Bloomsbury people," Professor Clive (whose Bloomsbury connections are limited to the British Museum) reveals Macaulay's private side with skill and sensitivity. There will doubtless be those who seize upon Macaulay's passionate—and frustrating—relationship with his two sisters as the key to the man

[8] John Clive, *Macaulay: The Shaping of the Historian* (New York, 1973). Thomas Babbington Macaulay, later Baron Macaulay (1800–59) was a civil servant, intermittently an M.P., and preeminently an historian of the Whig persuasion.

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and his work; but the author, despite the attention he pays to these domestic entanglements, does not himself leap to facile conclusions. Macaulay's Indian career is likewise studied in illuminating detail, and his Education Minute of 1835 is shown as a hallmark of pre-Mutiny imperial morality. Like its subject, this account hovers between literature and politics: that, in itself, is a commentary upon Macaulay's age. How much Macaulay's private anguish, or indeed his Indian service, contributed to "the shaping of the historian" must remain an open question. There are some who would maintain that historians, at least those few of Macaulay's stature, are born not made.

Hugh Thomas[9] recounts a pungent story about John Strachey, who, in the winter of 1940, applied for an appointment with the R.A.F. He was interviewed by two "fatherly" officers, one of whom ominously declared, "As a matter of fact, Mr. Strachey, we know *all* about you." The applicant, plunged into momentary despair, thought of all his past experiences which would easily disqualify him from service: his association with Sir Oswald Mosley, his affiliation with the Communist party, his friendship with at least one spy. "Yes, Mr. Strachey," the officer gravely continued, "your father was the editor of the *Spectator*." The anecdote is worth repeating, not only as an indication that the "old boy net" operated even in wartime, but as testimony to the irrevocable fact that, whatever else he might have been, John Strachey remained preeminently a product of his upbringing. A few years before his premature death, he identified himself as "a Whig, by conviction, as well as by descent." It is intriguing to contemplate what his cousin Lytton would have made of his biography. Professor Thomas has fashioned a highly entertaining account of his subject's perpetual quest for philosophic certainties, but he is occasionally left breathless by Strachey's ideological gymnastics. "Man must have something in which to believe," Strachey declaimed in 1924, soon after he joined the Labour party. "The Socialist movement is the first thing I have

[9] Hugh Thomas, *John Strachey* (New York, 1973). Evelyn John Strachey (1901–1963), M.P. and ideologue, ran the gamut of twentieth-century political opinions. He held a succession of offices in the postwar Labour governments, and, had he lived, would have occupied a prominent place in the 1964 administration.

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ever found in which I can begin to sink myself," he soon confided. But his strange odyssey had only begun. Thomas moves quickly through the period of Strachey's commitment to Mosley, then dwells more intensely (with the assistance of Strachey's widow) on his Communist connections. As always, Strachey remained unconventional in his allegiances: he held shares in the *Spectator* while he worked for the *Daily Worker*, and he did not hesitate to put down his son for Eton. Thomas is not altogether convincing in charting Strachey's disillusionment with the party, and, in particular, his description of Strachey's attitude to the 1937 Moscow trials smacks of special pleading. It would have helped in such instances to have further background information, which, throughout the book, is too often hastily inserted between parentheses. A definitive assessment of Strachey's postwar ministerial work must necessarily await the opening of official archives, but it will have to take account of Thomas's cogent arguments. In retrospect, Strachey's kaleidoscopic life may be described as he himself described his experiences at Birmingham during the General Strike: "*du cinéma*, pure and simple."

## II

After their brief marriage ceremony, Strachey and his second wife proceeded separately to sessions with their respective psychoanalysts. That, too, was part of Strachey's family inheritance, although analysis was more importantly something on which he relied (as he put it) "in order to avoid political follies." Wisely, Professor Thomas resists the temptation to engage in couchside theorizing, and allows others to offer more professional diagnoses. Much the same can be said for Professor Clive. On the basis of evidence at hand, psychoanalytical technique would have been inappropriate, if not ludicrous, in each of the other biographies considered here. Wellington's letters to Mrs. Arbuthnot, or even Lloyd George's to his "dear Maggie," do not lend themselves to the same purposes as Strachey's to the evocative Yvette Fouque; Campbell-Bannerman's or Balfour's Cabinet memoranda, however useful on other scores, provide a different perspective than Macaulay's diary.

Like all other historical exercises, biography depends on the

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availability of data. While these authors have not been short of "tools" to interpret their subjects, they have encountered a variety of obstacles in the course of their research. Grigg was unable to obtain access to certain correspondence which, infuriatingly, remains in the closed possession of the Lloyd George family; and Zebel, though his subject's papers are on public deposit, had to contend with Balfour's descendants. Thomas enjoyed the active assistance of Strachey's widow, but one can infer that this relationship was not without its drawbacks for both parties. Collectively, these biographers have displayed prodigious effort in unearthing materials, many of which their predecessors either ignored or consulted haphazardly. The Americans among them have tended to take a more exhaustive approach, perhaps by virtue of their academic training. Surely their painstaking technique is no reflection of their outsidedness. Is Grigg, an Englishman writing about Lloyd George and examining a number of his documents in translation, any more akin to his subject than Clive, a German by birth, writing about Macaulay? If temperature counts for anything, one would be loath to come to such a conclusion.

Of the works considered here, only Thomas's deals with events that occurred within the author's own lifetime. Not even Thomas, however, knew his subject firsthand. Doubtless something has been lost, but not, so far as one can tell, much of consequence: do we really need to know whether a great man preferred Claret or Burgundy? More often than not, a biographer's personal intimacy with the individual about whom he writes has proved a disadvantage, resulting in a wearisome catalogue of anecdotes and inhibiting critical inquiry. Wilson, writing more than sixty years after Campbell-Bannerman's death, can evaluate his achievements with greater detachment than Spender, who had his own position to defend. Lady Longford is capable of taking a longer view than Wellington's earlier panegyrists. As opposed to memoirs, which are not to be confused with biographies in the modern sense, these are scholarly investigations which are intended to transcend the lives with which they are immediately concerned.

It was Dr. Johnson's dictum that, "in lapidary inscriptions, a man is not upon oath." Previous generations of biographers, perhaps heeding this advice, did less than justice to their assignments

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and to their discipline. Those writing today, to the extent that they either succeed or fail, do so as full-fledged members of the historians' fraternity. Their products may take a biographical form: that is incidental. To one degree or another, they have been forced to sacrifice the scope which Matthew can attain in a monograph, but they have compensated by evaluating vital questions of personal motivation and by depicting issues and events as perceived by the contemporary mind. To their credit, they have striven for exactitude without forfeiting readability. And, not least of all, they have pointedly recalled the human content of history for the benefit of those colleagues who incline in other directions.

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# Reflections on Writing Biography of Public Men

LINDSAY ROGERS

Some years ago, when the late Professor Lindsay Rogers set about writing a life of Nicholas Murray Butler, President of Columbia University from 1902 to 1945, Rogers prepared some notes on the writing of political and intellectual biography which he hoped to use later in the foreword. Unfortunately, he was unable to complete the study before his death. His thoughts on various approaches to the art of writing political biography have an intrinsic interest apart from the Butler life and are well worth the consideration of any scholar approaching such a task. Consequently, Rogers' notes are published here with only minor editorial changes.—Robert H. Connery

"Nobody can write the life of a man but those who have eat and drunk and lived in social intercourse with him." Thus, Doctor Samuel Johnson, and the confident pronouncement suggests, not for the first (and also, not for the last) time, that, when a man is really great, his occasional absurdities are not trivial ones. James Boswell, who talked nonsense more frequently than the Doctor, once said much the same thing: "They only who live with a man

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LINDSAY ROGERS, 1891-1971, was a long-time professor of public law and government at Columbia University. An avid reader of biographies, he authored innumerable articles and books, including *The American Senate, Crisis Government,* and *The Pollsters.*



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can write his life with any genuine exactness and discrimination." If this were the whole truth, there would be an end to biographies save those written by contemporaries of their subjects.

Possessing at least the qualification that Doctor Johnson laid down, I now attempt to write a life of Nicholas Murray Butler, who was born 100 years ago and who lived until he was 85. Thirty years younger than Butler, I gladly and proudly served under him at Columbia University for a quarter of a century and was privileged to know him as well as did any of my contemporaries. Thus I am encouraged by Miss Hester W. Chapman's belief that "the value of strongly felt and expressed first hand recollection is beyond price, however prejudiced and limited it may be"; but I also remember Boswell's warning, not too consistent with his judgment quoted above: "Few people who have lived with a man know what to remark about him."

Although frequently urged to be a biographer, my (and Butler's) friend, Charles A. Beard, always refused. "I cannot," he said, "be sure enough about human character and human motives to write the life of anyone." Unwisely, I fear, I am about to be more venturesome than Beard. "Fools rush in where Angels fear to trend," and I can not anticipate encouragement by recalling the addendum that has been made to Pope's judgment: "Sometimes the fools have to be called heroes." This humility should explain, if it does not excuse, a discussion of certain views expressed by some whom, as one who has read much (and reviewed some) biography, I consider able professionals in the art. Certainly the views will have an intrinsic interest apart from their present context. I first cite Leon Edel, who in his felicitous (and acute) lectures on *Literary Biography* identifies three Architectural Ideas, between which the practitioners of the art he has mastered are able to choose.

The first and most common "is the traditional documentary biography"—"a large roomy life in which documents are constantly in the foreground and the author is never so happy as when he can be quoting literally from them." Perhaps the best example of this type is an official biography—the Monypenny and Buckle *Life of Disraeli*. Mr. Edel says that biographers of this sort sometimes "leave on our hands a frozen statue, cold as marble and as sepulchral." Or as was said of one such work, instead of being "a graceful urn or an elegant small obelisk," it was "a literary monument

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analogous in size to the Victoria Memorial." Despite Mr. Edel's caveat, I think that in the six volumes (which I read two by two) Disraeli did come to life through the quotations from letters and speeches. But this kind of *Life* is not my dish of tea.

The second biographical type that Mr. Edel distinguishes is called a "portrait" and is quite different from the chronicle type. "It derives in a sense from those minutes of lives which John Aubrey recorded in the seventeenth century; it is the biography of a man in brief; it seeks to catch the essential traits, all that will characterize and express the personality and suggest the life behind the surface exhibited to the world; it employs a minimum of background, and, as in the painting of a portrait, frames the subject in a given position." A third type "is at once larger than the portrait and yet smaller than the full length biography."

For this type, "the documents are seldom quoted at length, but are melted down and refined so that a figure may emerge, a figure in immediate action and against changing backgrounds. Such a work tends to borrow from the methods of the novelist without, however, being fiction. Here the biographer is not concerned with strict chronology; he may shuttle backward and forward in a given life; he may seek to disengage scenes or utilize trivial incidents—which others might discard—to illuminate character; he has so saturated himself with his documents that he may cut himself free from their bondage without cutting himself free from their truth. He achieves this by means wholly selective and psychological." Or, as it has been put in the next phrases, which connoisseurs of biography will recognize as Lytton Strachey's:

> It is not by the direct method of a scrupulous narration that the explorer of the past can hope to depict that singular epoch [which has just passed]. If he is wise, he will adopt a subtler strategy. He will attack his subject in unexpected places; he will fall upon the flank, or the rear; he will shoot a sudden revealing searchlight into obscure recesses, hitherto undivined. He will row out over that great ocean of material, and lower down into it, here and there, a little bucket, which will bring up to the light of day some characteristic specimen, from those far depths, to be examined with a careful curiosity.[1]

I have no intention of attempting the traditional biography and

[1] From the Preface to *Eminent Victorians*.

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I am not sure that Nicholas Murray Butler is the proper subject for one. As the years pass various phases of his remarkable career and certain of his writings will be examined as important incidentals in some problem with which a monograph writer is dealing. Only men who have been officially and for substantial periods, enmeshed in political institutions or have made major contributions to the literature of their times—say Disraeli, Winston Churchill, Woodrow Wilson, Franklin Roosevelt or Henry James—are proper subjects for many volumed treatments; and such treatments develop more and more into histories of the times in which the subjects lived. Mr. Link's third massive volume on Woodrow Wilson brings him down no farther than the end of 1915. In his Vol. III Frank Freidel concludes with the election of Franklin Roosevelt as President. The tasks of political biographers, like Messrs. Link and Freidel and of a literary biographer like Mr. Edel, steadily become more burdensome. Diaries, autobiographies, and biographies of contemporaries appear; private collections of papers come into the public domain—at least to those members of the public who can establish good grounds for seeing them. Hence, as Mr. Edel says, the portrait *genre* is now increasingly preferred to the fully documented type. . . .

My hope is to create a not unsatisfactory hybrid of types two and three, being subordinated and with scant use of the methods of the novelist.[2] In trying to do this, I have had in mind the concerns of Sir Edward Marsh when he wrote his brilliant memoir of Rupert Brooke; "In choosing my material I ask myself two questions: (1) is this essential or helpful to the portrait I am drawing? (2) should I enjoy reading this if it were about someone I did not know? If the answer to *either* question (not necessarily both) were, Yes, in it went." But certain other queries are relevant.

"A biographer must either love or hate his subject." My colleague, Professor James L. Clifford (of Johnsonian fame), says he got this judgment almost simultaneously from "a well known lecturer and critic" and also from "a popular reviewer." Mr. Clifford does not identify either would-be pundit and he himself dissents.

[2] There are other types, mostly, to my way of thinking, on the odd side. Here I need do no more than say that I follow the injunction of Sir Walter Scott. He believed that physicians (nowadays he would say psychiatrists) should heal their contemporary patients before they practiced on the illustrious dead.

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As Lytton Strachey has said, it is not the business of the biographer to be complimentary or critical; "it is his business to lay bare the facts of the case as he understands them."

To a Butler biographer the alternatives are particularly absurd. The most prominent and well publicized non-office-holding man of his generation rarely appeared in mental deshabille save to members of his family. Few outside the family knew Butler well enough to love him. One outside may admire but can one "love" public appearances? And as for hate? Surely for this there must be some personal grievance. The most notable of those whom, in the opinion of the non-Columbia world, Butler had treated brusquely, even harshly, continued to respect and even admire him. A tiny few, knowing that they had been dealt with according to their deserts, transformed their self-admissions into "hate." . . .

A year or so after he became President of Columbia University, Butler read the *Life of Gladstone* whose author, John Morley, was to become his intimate friend. Morley (later Viscount Morley of Blackburn) devoted a chatty chapter to the contents of the "Octagon"—a fire-proof room which Gladstone built for the storing of his letters and papers and called "a necessity of my profession and history." The "selected letters" he had received amounted to 60,000 and there were tens of thousands of copies of letters he had sent. Lord Morley remarks: "Probably no single human being ever received 60,000 letters worth keeping, and of these it is safe to say that three-fourths of them might as well have been destroyed as soon as read, including a certain portion that might just as well never have been either written or read. This slightly improvident thrift recalls the jealous persons who will not suffer the British Museum to burn its rubbish on the curious principle that what was never worth producing must always be worth preserving." Butler must have read, but he did not heed.

"I have destroyed practically nothing," said Franklin D. Roosevelt in 1939. "As a result, we have a mine for which future historians will curse as well as praise me. It is a mine which will need to have the dross sifted from the gold. I would like to do it, but I am informed by the professors that I am not capable of doing it. They even admit that they are not capable of doing it." Roosevelt was keenly interested about his place in history. Nevertheless he refused to keep a systematic record of telephone conversations or of con-

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ferences on either domestic or foreign matters. Something can be learned from diaries and autobiographies of contemporaries, and more will become available when foreign governments publish despatches from their ambassadors reporting what they heard the President say. But, write Messrs. William L. Langer and S. Everett Gleason, Roosevelt's closest associates "conceded their ignorance of his inmost thoughts" and hence "reliable and detailed information on the motivation of his foreign policy will in all probability remain forever lacking."

Butler was more thoughtful—or thoughtless? Telephone recordings are a new development since his heyday, but had it been possible he would have had them made. Like Roosevelt, Butler himself destroyed nothing, and some biographers will curse and some will praise him. If Messrs. Langer and Gleason are correct, the background of the 1945 agreement with the Soviet Union regarding Berlin will "forever" remain shadowy. Had Butler ever been involved in comparable transactions, in further (or as he always said "farther") reflection he would have dictated memoranda to throw light into corners that letters and documents left dark. His intention was good; he left a number of such memoranda but for the most part they do no more than recapitulate facts elsewhere ascertainable and do not venture to think out loud.

The Roosevelt papers are reported to weigh forty tons. Such exactness, I take it, is possible because the papers were transported to the Hyde Park Library. A precise estimate of the weight of the Butler papers has not been made, but ten tons would be my guess. Working in them one recalls what William Camden said when he tackled Lord Burleigh's vast accumulations: "on the great heaps and files" I "laboured until I sweat again, covered all over with dust." Burleigh, wrote his American biographer, the late Conyers Read, "had an itching hand for the pen." Butler (and men of his later generation) did not have itching hands; he and his contemporaries could dictate to secretaries who used typewriters and carbon copies went into the files. Butler did more than this. He had carbon copies copied so that he who asked might read.

But why should the wooers of posterity preserve the menus of all the dinners they attended? "She knew she was married to a hero and she kept everything" (including menus) writes E. J. Davis, the Buckinghamshire County Archivist, with reference to Mrs. Benjamin

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Disraeli's solicitude for the archives at Hughenden. Butler also kept dinner menus of which, with other prandial memorabilia, fill eleven boxes. We have not yet been told (at least I have not heard the telling) whether Franklin Roosevelt did the same thing. Neither he nor Butler had much zest for food, so their yesteryear menus are now of chief interest in showing ampler dinners than are now the custom. But who, having no doubt concerning "the abiding interest of everything relating to himself," would go so far as William Lyon Mackenzie King? The Canadian Prime Minister left memoranda listing the vegetables he had ordered served at his official dinners. Will some future biographer suggest that a passion for spinach was the "motivation" of Mackenzie King's tolerance in letting the French province (Quebec) hew its own line?

Butler's biographers can thank him for two boons—one of them unique. He carefully preserved everything about himself that had appeared in print: newspaper clippings and tear sheets from magazines are pasted in two hundred fat quarto volumes. Many identifications on the pages are in Butler's own handwriting, so he must have done some pasting also. He included everything—news items, eulogies, criticisms, reviews of his books—and his biographers will rarely have to resort to the *New York Times* Index. Many other men (or their wives) have preserved newspaper clippings but few ever did so as scrupulously as Butler did.

The unique boon is a volume of 375 pages, *Bibliography of Nicholas Murray Butler, 1872-1932*,[8] and manuscript pages covering 1932-1945. The listing is as full as Butler could make it. Books, introductions to books, presidential reports, articles, published letters, messages of greeting and extemporaneous speeches that were unreported. One who pores over these pages finds a Butler chronology—even the names of the ships on which he made speeches at the traditional gatherings to raise contributions for seamen's charities. Here I need say no more than that Butler's activities were more numerous and varied than were those of any contemporary public figure. In 1945, the year of his retirement, Butler, blind and ill at 83, delivered twenty-two addresses, wrote several magazine articles, and prepared the prefaces for ten publications of the Carnegie Endowment for International Peace.

[8] Columbia University Press, 1934. The edition was 700 copies for complimentary distribution.

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But unhappily, the materials that might have been most revealing on Butler's innermost thoughts of his last decade no longer exist. In 1933 his dearly beloved daughter married and went to live in England.[4] Thereafter Butler dictated whatever he thought would interest her and gathered together the fragments for a long weekly letter. Nathaniel Hawthorne's widow, when publishing his journals and letters, tried to destroy the passages that she had deleted but the discovery of infra-red photography kept Sophia from succeeding. Butler's widow burned the carbons and the originals have vanished. From 1933 to 1938, the waning, if any, of Butler's faculties was largely imperceptible. For these five years and, in a different way, for the waning eight years that remained, the weekly sittings might have been above price for one attempting a biographical portrait. . . .

"Paint me with warts and all," Oliver Cromwell said to Lely. "Whatever you do, do not pretty me," was Walt Whitman's injunction to a friend, Horace Traubel who proposed to write about him. "Include all the hells and damns." Butler would, I think, have taken the same attitude which is that of men serenely confident (or over confident?) that they have acted their roles well. Butler was sure that in his case the "warts" were trivial; as for the "hells and damns," he would not have used such words because he did not swear.

Some "great men have considered that any biography can hardly fail to be a betrayal, for the very sound reason that no-one really knows anything about anyone else" writes Iris Origo, and she quotes Carlyle: "The world will never know my life if it should write and read a hundred biographies of me. The main facts of it are known and are likely to be known to myself alone of all created men." These words are on the first page of the life written by Carlyle's closest friend, James Anthony Froude.[5] In his life-long play for posthumous attention Butler tried to make known not only the "main facts," but many trivial ones. To writers who now attempt to deal with them he would say, with Shakespeare (whom he almost never quoted):

[4] Butler's next book *Between Two Worlds* (1934) bore the dedication *Filiae Dilectissimae.*

[5] "A well written life," Carlyle once said, "is almost as rare as a well spent one."

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Speak of me as I am; nothing extenuate,
Nor set down aught in malice . . .

Only a biographer of genius, someone has remarked, can rehabilitate the second rate. On the other hand, to quote Carlyle again (and as Butler once quoted him),[6] "great men, taken up in any way, are profitable company." Butler was not a second-rater. Indubitably Butler was a great university president—the greatest of the twentieth century; and if he had . . . fulfilled his only other obsessive ambition, he would, as President of the United States, have been one of stature. I was of this opinion before I began to write . . .

[6] In his lectures (1923) on the great men who built the American Nation.

Correction: In Jack P. Greene's September *PSQ* review of Pauline Maier's *From Resistance to Revolution*, words or phrases were inadvertently omitted from at least four sentences in a way that caused, at best, verbal infelicities and, at worst, grammatical mistakes to appear in prose published over Professor Greene's name. Also, the dates for the "petition movement" were incorrectly printed as 1769-1776 instead of 1769-1770. The *Quarterly* regrets these errors. Ed.

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# Book Reviews

The Human Meaning of Social Change *edited by Angus Campbell and Philip E. Converse. New York, Russell Sage Foundation, 1972.—x, 547 pp. $15.00.*

This volume, like its predecessors, W. E. Moore and E. B. Sheldon, *Indicators of Social Change,* and O. D. Duncan, *Toward Social Reporting: Next Steps,* grew out of the concern of the Russell Sage Foundation to gather data on key features of contemporary American society and to contribute to the measurement of social trends in such areas as health, education, housing, income distribution, and crime. But where the earlier volumes dealt mainly with a variety of objective indicators, this companion piece focuses on the social-psychological dimension. It is concerned with the attitudes, expectations, aspirations, and values of the American population.

The editors seems to have given the contributors a rather free rein. As a result, these twelve essays differ not only in quality but also in conception. While all of them seem informed by the desire of the authors to ferret out the human meaning that people attribute to the particular institutions that are discussed, by the wish to assess the impact of various social environments on the quality of people's lives, they seem to have conceived their tasks in quite different ways.

John P. Robinson and Philip E. Converse, reporting on the changing ways in which Americans budget their use of time between such activities as work, leisure, and family interaction, provide a critical overview of the scanty information heretofore available, and then proceed to present the results of a major study which they directed. Among many fascinating bits of information, one learns, for example, that re-



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spondents reported spending slightly over 14 hours a day alone (including sleep), while spending only slightly over 4 hours a day with members of their nuclear family. "Housework," it turns out "was by far the least satisfying activity for women, with over half the housewives noting their particular displeasure with it." This chapter is a mine of important information on the quality of life in America.

Peter H. Rossi's chapter on "Community Social Indicators," on the other hand, provides no new data. Instead it presents sophisticated and theoretically informed sets of categories and research strategies for future studies. It should be of major use for students in the area, but contains virtually no data on the present state of knowledge. By contrast, some other chapters are mainly humdrum reviews of the literature. The chapters on the family and on the meaning of work, by Marvin B. Sussman and Robert L. Kahn respectively, by Rolf Meyerson on "lesiure," and by Herbert H. Hyman on social psychological changes in the Negro population, fall mainly into that category. George Katona, writing on "The Human Factor in Economic Affairs," adds little to what he has said previously, and the same may be said of Albert J. Reiss's paper on the quality of systems of criminal justice. Angus Campbell's chapter on levels of aspiration and satisfaction reads more likes an outline than a full report.

Philip E. Converse, in "Change in the American Electorate," gives an enlightening and highly rewarding report on secular trends in, *inter alia*, electoral participation, the evolution of partisanship, the impact of increased levels of education on the sense of political efficacy, and the sense of trust in government. His discussion of the effects on rates of electoral participation of such apparently technical matters as the adoption of the consolidated "Australian ballot" instead of the party ballot and the introduction of stricter registration systems around the turn of the century, are in themselves worth the price of admission.

Melvin Seeman's essay, "Alienation and Engagement," is an equally important piece of work. Drawing on his previous contributions as well as on other research, Seeman shows the ways in which the study of alienation can be rescued from the hands of fuzzy romantics who threaten to turn alienation into a modish "in" term devoid of precise denotations and made into an important tool for research. Seeman shows how probing into conditions that induce a feeling of powerlessness or a sense of normlessness, meaninglessness or social isolation and self-estrangement, may illuminate hitherto neglected aspects of the human condition in contemporary America.

Many areas that need mapping, as the editors note, have not been included in the volume. In other areas, as they also note, previous in-

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vestigations were so haphazard and uncoordinated that there is little on which current research can build. This volume can, hence, only represent incomplete preliminary and tentative findings. But there is enough valuable material here to suggest that future systematic research on the social psychological correlates of social change is likely to come up with exciting results. Our cognitive map of the meaning of change to contemporary Americans still looks somewhat like geographical maps of Africa looked in the eighteenth century, but this book helps perceive at least some major contours of more precise knowledge, in at least some if not in all areas.

LEWIS A. COSER
*State University of New York at Stony Brook*

Luce and His Empire *by W. A. Swanberg. New York, Charles Scribner's Sons, 1972.—xiii, 529 pp. $12.50.*

In its early days, *Time* magazine was a glib and brash rewrite of the newspapers. As years passed, Time Incorporated came to be one of the world's great information-gathering organizations. High-paid correspondents around the world transmitted hundreds of thousands of words weekly to the world's best paid rewrite men in New York. The Time Inc. "morgue" of clippings and special reports became perhaps the most complete in the country; the checking system for confirming every isolated figure or middle name was the most thorough yet devised. Usually the facts were screened and then skillfully woven around a framework, often a preconceived "angle" to make interesting reading or sometimes to reflect Henry Luce's "point of view."

In his voluminous book on Luce, W. A. Swanberg has energetically scooped up a massive array of information from diaries, from Time Inc.'s own files, from correspondence and from countless interviews. He has woven these facts around a framework that, like many an early *Time* story, has an oversimplified "angle." In so doing Swanberg has turned a complex, multifaceted man into a consistent, fairly simple, one-dimensional character—an obsessive propagandist for his prejudices. As with those *Time* stories, the book makes interesting reading, often complete with contrived we-were-there impressions and strong opinions put in the mouths of unnamed observers. The result, while both good reading and voluminous, leaves one with the impression that a mass of precise and accurate details have added up to a not entirely accurate whole.

It would be unfair to imply that Swanberg's book has all the drawbacks of the more dubious *Time* articles. It is far more complete; it even

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records (though it subordinates) countless facts that don't fit in with the "angle." (In fact, it contains almost all the raw material needed by some future biographer less committed to a simplified theme.) Yet it tends toward *Time*-like flaws, employs *Time*-style scene-setting, and (perhaps in heavy-handed jest) sprinkles such *Time*-like gimmicks as "Lucepress" and "Timen" (for Time writers) through the text.

Swanberg's central theme appears to be that Luce was primarily a rather single-minded and heavy-handed propagandist for American power, capitalism, extreme anticommunism, republicanism, even fascism, and the logical extensions of these causes and that he conscientiously sought out various facts and opinions but never let them obstruct his prejudices. Luce emerges as a consistent and rather boring villain. Swanberg cites abundant evidence of Luce's continuing prejudices and his ability to have them reflected in his publications. Some of the quotations from Luce magazines are pretty shocking as we are reminded of them: the continuing campaign for triumph in Vietnam, the reverential treatment of Chiang Kai-shek, the support for Franco against "illiterate . . . blackamoors" in Ethiopia, the early tolerance (and sometimes enthusiasm) for fascism ("Italy is calm and united under the emblem of common strength and effort that is Fascism").

Luce, in this reviewer's opinion, deserves much of Swanberg's scorn. True, he had personal decency, a sense of do-goodism, and religious faith. Yet, to anyone who believes in fair journalism, he was, on balance, a reactionary force. While he admitted to point-of-view journalism, as opposed to "objective" journalism, he arranged things so that his obsessive prejudices emerged in his magazines masquerading as straight and factual reporting.

Swanberg, however, seems to overdo things when he talks of the enormous effect Luce had on the course of American history. His magazines undoubtedly had effect, but it is doubtful that they governed events to the degree the author indicates. The good American public can find a publication engaging without swallowing its preachments whole.

Those of various stripes who knew Luce—and even much material reported but subordinated in the Swanberg book—indicate that he was a much more complex individual than Swanberg himself seems to think. He could even be an engaging conversationalist on occasion, was genuinely liked as a person by some who hated his views, had some basic insecurities that showed up in interesting ways, and even experimented with LSD in company with his wife Clare.

The Swanberg book could well have devoted more attention to Luce as an organizer and innovator and particularly to the pioneering of Luce and his partners in magazine journalism. In those areas where

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there were no strong Luce prejudices—medicine, music, education, science, even business, and other fields—*Time*, for all its foibles, has contributed to a better informed public. It developed ways of putting news in better perspective and making it more understandable. *Life* found ways of making serious subjects interesting to millions, of reporting on new trends, and, though subject to mass-culture criticisms, sparked some broad public interest in the arts. (*Life* died because of a complex of other factors.) *Fortune*, at its best, has done unprecedentedly thorough—and sometimes devastating—reports on various business empires, plus perceptive reporting on the state of the economy. Though much of the credit for editorial innovation should go to Luce's early partner, Briton Hadden, and to later editors, Luce has to be credited with recognizing and building on the innovations.

Some recognition also should go to the extraordinary job of staff building. Time Inc. undoubtedly managed to recruit the greatest array of skilled writing and editing craftsmen of any journalistic organization in America. In the post-Luce era many of those talented writers and editors are beginning to have the opportunity to help realize their potential gifts in the arena that lured them there in the first place.

In brief, Mr. Swanberg did a stupendous job of research, a less good job of digesting, analyzing, and drawing conclusions.

EDWARD W. BARRETT
*Communications Institute*

Implementation—How Great Expectations in Washington Are Dashed in Oakland; Or, Why It's Amazing that Federal Programs Work At All, This Being a Saga of the Economic Development Administration as Told by Two Sympathetic Observers Who Seek to Build Morals on a Foundation of Ruined Hopes *by Jeffrey L. Pressman and Aaron B. Wildavsky. Berkeley, University of California Press, 1973.—xviii, 162 pp. $7.50.*

The New Federalism *by Michael D. Reagan. New York, Oxford University Press, 1972.—168 pp. $5.95.*

As the alternate title says, Pressman and Wildavsky have undertaken to find out why one small corner of that ambitious edifice known as the Great Society crumbled between 1966 and 1970. Their thorough and fascinating report is full of lessons for program planners to apply if, or when, the country is in the mood for another round of Great-Society-type attacks on domestic social problems.

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The case study covers the attempt of the Economic Development Administration to develop jobs for the hard-core unemployed in Oakland by making grants and loans for public works and business development. A commitment of $23 million was made in a crisis atmosphere to forestall riots in the city's black ghetto, but nearly three years later only some 50 permanent jobs had been created. After five years, the record was somewhat better; EDA could claim over 500 jobs for blacks and Mexican-Americans, with more to come when pending projects were completed.

Almost everything conspired to produce delay. Other federal agencies were obstructive or noncooperative. Agreement on specifics between EDA and various bodies in Oakland were hard to reach. Alterations in plans and the inevitable cost overruns had to be approved. Succumbing to the current fashion of quantifying the dubiously quantifiable, the authors tell us that 30 decisions relating to the public works program required 70 concurrences by participating organizations and that, assuming an 80 percent probability of agreement by each participant, the chance that all 70 clearances would succeed is .000000125. To bring the latter probability to 50-50 would require that the former be 99 percent. The authors prudently warn us not to take their figures too seriously, but they make their point.

The lessons from their study are presented clearly: Establish simple, direct channels for program execution; avoid implementation schemes that require cooperation of a multiplicity of organizations, some of which may be indifferent or negative; more fundamentally, consider implementation as part of making policy and do not assign program initiation to one group of people (especially fly-by-night governmental amateurs, one might add) and implementation to others.

If these principles had been applied, the Oakland experiment would never have been attempted. Applying them, Pressman and Wildavsky offer an alternative to their cartoon illustrator Rube Goldberg's approach to ghetto unemployment that EDA adopted: simply subsidize the wages paid by employers who hire the hard-core unemployed.

The authors define "implementation" as a discrete field of study and call for an end to its neglect. Let us concur, enthusiastically. The government launches one-hundred "experiments" for every one whose consequences are analyzed in a manner that makes it truly an experiment in any scientific sense. This admirable case study, plus the two or three others the authors could find that deal with "implementation," are no more than a beginning.

Eventually, those elements of President Nixon's "new federalism" that are adopted should be subjected to the same kind of rigorous appraisal.

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Meanwhile, Professor Reagan's book by that title is a different kind of document. Those who seek fresh empirical data about federalism will not find it here. Reagan has assembled and critically presented, for classroom use, the views of various schools of thought on the theory of American federalism, the fiscal "crisis" of state and local governments, and grants-in-aid and revenue sharing as means to help meet that crisis.

Reagan suffers two misfortunes. One befalls many who put analyses of current issues between hard covers: One-third of his pages argue the pros and cons of revenue sharing, but by the time the book is read these arguments are largely moot; now the question is no longer what might happen under revenue sharing but what is happening. The other befalls gamblers who go out on limbs with risky predictions. Revenue sharing, says Reagan, "isn't getting anywhere." Efforts on its behalf "are wasted because we can predict rather confidently that it will not be adopted, or would not last if it were adopted." Instead Congress will offer fiscal help through tax credits and through assuming such state-local functions as welfare and such private functions as medical care financing. The latter, Reagan says, is "very clearly predictable," but unfortunately by this time his credibility as a political prophet has been sadly impaired.

His book is marred, finally, by too many examples of bad editing, which permitted excessive repetition and such horrendous constructions as "all domestic priority setting . . . would be set by the states" and "Eighty per cent of the $2 billion . . . would be distributed . . . among each of the . . . Areas" to appear in print.

JAMES L. SUNDQUIST
*The Brookings Institution*

The Woman Citizen *by J. Stanley Lemons. Urbana Illinois, University of Illinois Press, 1973.—xiii, 266 pp., $9.50.*

Women, Resistance and Revolution *by Sheila Rowbotham. New York, Pantheon Books, 1972.—288 pp., $7.95.*

*The Woman Citizen* and *Women, Resistance and Revolution* are a study in contrasts. J. Stanley Lemons' scholarly inquiry into social feminism in the 1920s is exhaustive, cautious, and impartial. Sheila Rowbotham's survey of the historical relationship between feminism and revolution is sketchy, assertive, and frankly partisan. Both are good history for quite different reasons, and both offer their special insights into the nature of political man and, at last, of political woman.

The achievement of suffrage was not merely the end of one chapter in

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the history of women's rights and the beginning of the next. Lemons stresses the continuity in women's collective efforts and the complex intermingling of impulses towards feminism and social reform. In fact, he claims that it is to women we owe the survival of the progressive impulse in the period between the end of the First World War and the birth of the New Deal. It was they who fought for legislative programs that simultaneously recaptured the utopian promise of the earlier era and foreshadowed the pragmatic shrewdness of the succeeding one. Furthermore, Lemons confronts us with a phenomenon until now not fully faced: that there were women about who were skeptical of what the vote by itself could accomplish. Far from dulling their ardor, their realism helped give a practical edge to their reformist activities and, because of their willingness to work at limited objectives, succeeded in obtaining at times impressive results.

Soon after suffrage was won, it became clear that women, like men, divided their political allegiances. However, within the party structure their effectiveness, when they did mobilize, was considerable. One of the best examples of this is the election of Gifford Pinchot as governor of Pennsylvania in 1922 as a consequence of the organizational efforts of Republican women in opposition to the powerful Republican machine. At times women were even capable of nonpartisan support of other women: Florence E. Allen, first of her sex to be elected a state supreme court justice in 1922, owed her re-election in 1928 in part to the backing of Republican women who declined to be guided by party mandates against a Democrat. Lemons' metaphor of "the lady and the tiger" is a dramatically effective vehicle for his account of women's entrance into the male political arena, suggesting the precariousness of those initial forays. There were many who feared that the tiger, in the form of conventional machine politics, would swallow the lady, whose composite identity ranged from orthodox politicians who happened to be female to radicals like Mrs. O. H. Belmont. Mrs. Belmont declared that women should eschew all contact with existing male-dominated parties and close ranks in solidarity within her National Woman's party. Lemons observes that, while their fears were to some degree justified, "the 1920s was the period of most substantial expansion of office-holding for American women; the levels reached in that first decade of suffrage have remained fairly constant."

Lemons' identification of the links between progressivism and feminism serves as a critique of historians of the 1920s who, in their general neglect of the history of women, have failed to take account of events which clearly demonstrate the survival of progressivism in the minds of the social feminists of the 1920s. In his detailed analysis of the

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Sheppard-Towner Maternity-and-Infancy Protection Act of 1921 the reader is offered convincing proof of this contention. The involvement of the federal government in its novel approach towards health care in the states met with predictable opposition among conservatives who were ultimately able to prevent its renewal at the end of the decade. But its initial passage as a result of the concerted efforts of women's groups was a genuine victory for enlightened feminism as well as a forerunner of New Deal policies.

Throughout his narrative Lemons grapples with the ironies of the crippling internal battle between these feminists who espoused an equal rights position and others who promoted protective legislation. He points to the variety of ways in which social feminism was checked, the most notorious being the appearance of the "Spider Web chart" which, by tracing a fanciful network of organizational affiliations, purported to illustrate collusion between bolshevism and feminism. Ultimately, however, the social feminists persisted with a multitude of concrete programs and legislative efforts throughout a decade of relative indifference to reform.

Lemons' prodigious research into primary sources results in a book of such density that the thread of its argument is occasionally obscured. This is hardly the case with Rowbotham's forthright brief for feminism. Comprehensive in scope, it covers women rebels from the American Antinomian Anne Hutchinson to the women of the Cuban and Algerian revolutions.

Women's shift from participation in home industry to an exclusively domestic role under developing capitalism marked the initial phases of a steady retreat in feminine susceptibility to rebellion. Yet there were those who struggled with the realities of women's near-enslavement, striving to place their feminist programs within the larger context of a radical ideology. At the end of the eighteenth century Mary Wollstonecraft could not, according to the author, divorce herself from the bourgeois assumptions of her time and thus failed to produce an economic philosophy within which her noble design for living could function. But by 1825 William Thompson had plunged into a thoroughgoing critique of capitalism, advocating a voluntarist society and the end of marriage and the family as then constituted. Rowbotham undertakes to evaluate succeeding stages of the interaction between feminist and revolutionary thought, conceding, with another contemporary British feminist, Juliet Mitchell, that "the liberation of women has remained marginal in Marxist theory—dependent on the emancipation of the working class." In fact, her examination of major revolutionary movements from the French to the Russian Revolution suggests that the aims of women have

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never been fully co-ordinated with the expressed aims of any revolution. The fate of women in the Russian Revolution is perhaps most instructive. After a brief flirtation with feminist innovation, the old ways were reinstated in Soviet Russia, among other reasons because of a strong reluctance to accept changes in personal relations between the sexes which might threaten the stability of the "socialist family."

Since liberation for women can most easily be grasped as elevation to a role equal to men within the framework of a pre-revolutionary society, it may be asking too much of women to fight in large numbers for a political emancipation whose consequences for themselves they are unable to predict. Indeed, if the history of modern revolutions is any indicator, women would do well to concentrate exclusively on a program for their own liberation. Despite the relatively successful outcome of Maoist efforts in behalf of women, even China has not resolved the dilemma that haunts women's liberationists. As Rowbotham states it: "if the revolutionary movement is to involve women, not as supporters or attendants only, but as equals, then the scope of production must be seen in a wider sense and cover also the production undertaken by women in the family and the production of self through sexuality." Rowbotham herself acknowledges that the vast reversals in male psychology she has hinted at must precede any revolution whose outcome could be meaningful for women. The old-fashioned social feminists of the 1920s, whom Lemons modestly restores to historical consciousness, would dismiss this as an impossible dream. Rather than vainly attempting to persuade men of their own value, they bent their energies towards a reform of the human context within which both men and women learned to perceive value. Out of the gradual re-ordering of priorities that would ensue, they believed a new world might emerge.

ANNETTE K. BAXTER
*Barnard College*

Incentives and Planning in Social Policy *edited by Bruno Stein and S. M. Miller. Chicago, Aldine Publishing Co., 1973—viii, 214 pp., $6.00.*

This volume is the product of a DHEW-funded effort to shed light on the values and problems in use of incentives as motivating forces in policy and planning. It therefore discusses, in the six project "products" chosen for publication, such topics as revenue sharing (Elementary and Secondary Education Act of 1965, Title I), performance-contracting, vouchers, and the issue of work incentive and welfare reform.

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In a strange way, the two very able editors, whose qualifications are in economics, sociology and political science, fail to evaluate their own enterprise, designated by them as a "unique project," an experiment in incentives. In brief, they distributed DHEW funds "to stimulate academic research on social policy questions with particular emphasis on the needs of government policy makers." Yet, at no point do they put the results to the test Miller proposes generally: "the comparative returns of various kinds of policies, including those not involving incentives." Since the reader is offered only six excerpts, plus stimulating, if brief, comments by the editors, he does not know whether the case is made.

A mere reading of the materials allows only reactions to the pieces per se, and not to the experiment as a test of incentives for scholarship. Evaluated in this sense, the collection is not better or worse than several other social policy collections in the health, education and welfare field. Indeed, it is uneven. The chief virtues of several of the papers (Lave, Lave and Morton on paramedical personnel, or Singell and Yordon on education, for example) is in demonstrating how a good analytic mind, tied to a systematic literature review, is useful in policy analysis. In several instances there is good use made of supplementary analysis of relevant "cases" (Cohen, McCann, Murphy and van Geel on revenue sharing). The only paper completely on target on the incentive issue (analysis, paradigm, two "country" cases) is Rein on work incentives and welfare reform. He dramatizes how one policy device can hardly be expected automatically to satisfy conflicting objectives. So long as reformers attempt to create work incentives and assure an above-poverty income guarantee for the poor through one program they are doomed to failure—or to turn to administrative compulsion as an alternative way to achieve their objectives. The congressional deadlock was inevitable, since the alternative was the dropping of objectives precious to at least one major constituency. Perhaps as a next step, we will identify people we are willing to support decently, whether or not they offer themselves for work, and develop for them a program in which work disincentives is not an issue.

ALFRED J. KAHN
*Columbia University*

The Hidden Injuries of Class *by Richard Sennett and Jonathan Cobb. New York, Alfred A. Knopf, 1972.—x, 276 pp. $6.95.*

Both authors took part in the research for this book, each of them directing a part of it, but the book was written by Richard Sennett and

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(we are told) "the emphasis and emotional tone" are his own. They are strongly marked by a personal style of thought which delights in paradox and digs into the mind of the American worker in the manner of a Shakespearian critic analyzing the character of Hamlet. There is, in fact, more than a hint of the flavor of high tragedy in the picture he presents. The source from which he draws his impressions is a series of 150 interviews in depth of men and women in Boston all of whom had passed most of their adult lives as manual workers. Though women were interviewed, the book is primarily about men, and the effect on them of being permanently enmeshed in a subordinate occupational role while trying to maintain their dignity as husband, father, and individual human being. "Dignity" is the key concept in this analysis of class distinctions, rather than welfare or the standard of living.

The basic theme is the familiar one: on the one hand the American dream—the belief in individual freedom and equal opportunity, and on the other the reality, of inequality and, for the majority, social immobility; the result, frustration. But the most distressing effect of this, in the view of the authors, is the feeling of shameful failure and personal inferiority that it produces, in place of a sense of injustice or spirit of revolt—which might be healthier. Because people believe that careers are shaped by merit, they attribute their personal lack of success to a personal lack of ability. The critical discriminating factor which distinguishes the elite minority from the masses is education, because it is the source of those intrinsic abilities which mark the superior person and give him dignity. So the most common aspiration of the ambitious is to become—or for their sons to become—not the boss, but rather a professional of some kind, whose superior status, and dignity, are rooted in himself, not in his position.

This theme is elaborated with considerable skill and subtlety and perhaps with some exaggeration. But, as the reader is given only a few scanty glimpses of the evidence, he cannot really judge—and even these extracts have been edited, we are told, "to the boundaries of fiction." To an Englishman this vision of the American workingman obsessed and psychologically tormented by class-consciousness is surprising, in particular the representation of the man of higher social rank as "the man I call 'Sir' and who calls me by my first name." This sounds to me more like prewar English than postwar American society.

Part Two of the book, which deals with the defenses erected against the ravages of class-consciousness, opens with the sentence: "The puzzles of freedom and dignity described so far ought to drive people mad." But they do not, because of these defenses. The most fundamental defense is the schizophrenic separation of the world of work from the

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world of self, i.e., the family. This notion of the balance achieved by compensatory roles is not novel, especially as it applied to males. The classic examples are the downtrodden clerk who compensates by lording it over his wife and the henpecked husband who compensates by bullying his clerks. But here again the elaboration is ingenious. The book might be said to resemble a relief map in which the proportions of the hills to one another are maintained but the ratio of their height to the area on which they stand is exaggerated.

The most weighty thought that Sennett and Cobb leave with us is roughly this: class distinctions will persist as long as a man is valued, and rewarded, for what he can do rather than for what he is. If, therefore, in 'post-industrial' society productivity and progress depend increasingly on the intellectual and technical abilities of individuals, class distinctions and class-consciousness will be intensified. As long as there is a definite ideal to which all aspire but which few can attain, discrimination in terms of distance from it will be painful, and will put dignity in peril. Compared with some now current, the view is pessimistic, or at least antioptimistic.

T. H. MARSHALL
*Cambridge, England*

The Bracero Program: Interest Groups and Foreign Policy *by Richard B. Craig. University of Texas Press, 1971.—xvii, 233 pp. $7.50.*

The bracero program had its origins in World War II. In the depression years, a large influx of dust bowl migrants had reduced the dependence on Mexican and Filipino farm workers. But with Pearl Harbor the demand for farm labor jumped as Okies and Arkies moved into the defense plants and shipyards and the Japanese-Americans were evacuated. In the period from 1942 to 1947, several hundred thousand Mexicans were recruited under an international agreement (the bracero program) to work as farm laborers, mostly in California and the Southwest. But once defense employment began to be curtailed, the wartime agreements were in effect permitted to lapse. From 1948 to 1951, recruitment continued but on a different basis, with less effective controls, and the program soon got out of hand. The number of illegal entrants or wetbacks reached alarming proportions as the Korean War once again stimulated defense employment with the related increase in agricultural production. The farm labor market was so flooded with wetbacks that a new program

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was initiated in 1951 which prevailed, with modifications, until December 1964. During this entire span of twenty-two years, some 4.5 million migrants were legally contracted for work, as farm laborers, in the United States.

The present study examines the interplay of binational and group interests functioning in the bracero program; it also studies the operation of the project itself. *The Bracero Program* is based almost entirely on written sources; Craig has not sought to interview individuals, either growers, imported workers, native-born Mexican-Americans, local officials, immigration service personnel, or union organizers. But the source materials are handled with care and the documentation is impeccable. The use of Mexican sources is of particular value and interest. Documents, records, and reports—facts, figures, and dates—are indispensable for a study of this kind but a little first-hand involvement would have sharpened the focus.

Perhaps because the study is largely based on group interests and systems-analysis theory, the author ignores the geographical and historical setting. For example, he writes that Mexicans have been working in the Southwest since the turn of the century. But Mexicans have always worked in the Southwest; they are natives of the region. For long periods the border was little more than a hypothetical line on a map. At many points, in a study of this nature, the distinction between Mexican nationals and Mexican-Americans breaks down. In the same fashion legal and illegal Mexican recruitment tend to overlap. What this study strikingly lacks is some recognition of the fact that the region constitutes historic borderlands between Mexico and the United States; the analogy with European immigration is misleading. Shown on a map, the fan or arc of settlement by the Spanish-speaking extends for a distance of a hundred or two hundred miles north of the border. For years this borderlands region has constituted a single large, steadily expanding labor market in relation to which the border is a complicating but more or less extraneous factor. As with any migration movement, push-and-pull factors have been involved in the northward movement of Mexican workers but not to the exclusion of other factors, such as, geographical similarity, shared historical and social ties (including family relationships), and a mixed cultural heritage. But this missing dimension does not detract from the value of what Mr. Craig has to say about the bracero program and its significance in terms of Mexican and United States relationships.

CAREY MCWILLIAMS
*The Nation*

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Reforming School Finance *by Robert D. Reischauer and Robert W. Hartman with the assistance of Daniel J. Sullivan. Washington, The Brookings Institution, 1973—xiii, 185 pp. $6.95; $2.50.*

While school finance experts will find little new in this slim volume, undergraduate and graduate students will welcome it as the first volume which synthesizes most of the recent scholarly work on the subject. Such a contribution should not be underestimated. The school finance field has grown so quickly that it is virtually impossible to track down all the articles, monographs, commission reports, and books to get a balanced picture of the impact of the various governments and court decisions on the current system of financing schools.

Focusing on the school budget crisis, inequity in school finance and the revenue and enrollment problems of nonpublic schools, the authors clearly and concisely sort out the policy issues and provide just enough supporting data for the reader to understand a very complex field.

Only when the authors try to predict the future do contradictions appear. For example, they suggest that we may expect " . . . the severity of the aggregate fiscal problem facing school districts to abate" in the near future. To support this argument they point to the decline in the number of school-aged children; the oversupply of teachers; a possible reduction in the rate of inflation; the introduction of cost-saving innovations; and the possible impact of recent studies that suggest little relationship between small increases in expenditures and improved academic performance. However, elsewhere in the book they point out that almost two-thirds of the increase in expenditures per pupil were related to increases for teachers and other instructional personnel. This increase is in part explained by a reduction in pupil-teacher ratios and workloads for all instructional personnel. Thus, even a dramatic decline in school-aged children may not reduce the number of personnel servicing them.

Indeed, there is some evidence that the projected merger of the National Education Association and the American Federation of Teachers will lead to more effectiveness in bargaining for higher salaries and fringe benefits; workload changes by teachers will continue the upward spiral of school costs.

While some readers might take issue with the author's predictions about future financing, those sections do not in any way detract from this excellent summary volume.

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The Analysis of Subjective Culture *by Harry Triandis in association with Vasso Vassiliou, George Vassiliou, Yasumasa Tanaka and A. V. Shanmugam. New York, John Wiley, 1972.—xii, 383 pp. $17.50.*

This important, rich, and complex book is the second volume in the Wiley series on Comparative Studies in Behavioral Science. This book is going to be at least as important as the first volume in the series—Prezeworski and Teune's *The Logic of Comparative Social Inquiry*—and it is a more original piece of work. Interest in this work is related to the book's organization.

Those who wish to find out just what this "subjective culture" is will be particularly interested in the introduction and the first four chapters. The authors outline here in rather global terms their long-run aims of making subjective culture into a fully developed chapter of social psychology. Subjective culture is "a cultural group's characteristic way of perceiving its social environment" and it refers to "variables that are attributes of the cognitive structures of groups of people." In Chapter Two the domain becomes still more recognizable when the entities in subjective culture are named—"perceived" (in the broad and vaguer sense) roles, tasks, norms, ideals, cognitive structures, values, behavioral intentions, anticipated costs of behavior, anticipated rewards, and so on. These entities are then placed within an interesting conceptual scheme which includes the proximal and distal antecedents of subjective culture, the basic psychological processes related to the dynamics, along with consequents of theoretical interest. Chapter Three provides an excellent analysis of methodological issues in cross-cultural research, and Chapter Four outlines critically and succinctly the methods available for studying subjective culture.

Some will read this book to catch up on the present status of new tools for intracultural and cross-cultural study. Chapter Four and the remainder of the book are a progress report on the remarkable cross-cultural expansion of the semantic differential techniques, but with fresh emphasis upon the more recent behavioral differential, role differential, and others in the growing family of tools which this Illinois group has been developing. (Most of them are still unpublished.) Chapter Three even includes an Appendix on "How To Develop Cross-cultural Tools: A Cookbook."

Given the intensity of the cross-cultural research experience of this group, their suggestions in this "Cookbook" may be their most important achievement. They eschew, as much as possible, attempts at direct translation of materials from culture A for use in culture B. In fact,

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the general aim is not so much a search for cross-cultural equivalence in our tools, but rather a more sophisticated application of multitrait, multimethod considerations, aiming for parallel experiments or studies. The search for a tool should commence with an inductive emic step (i.e., one based on intracultural meanings) which is guided by the aim of an eventual etic, or pan-cultural product. Thus, as the case of role differential, the resultant "nomological network" of data permits the discovery of *some* underlying dimensions or critical features on which roles are differentiated in *all* cultures studied; some call for cultural moderator variables, and some which occur in only one culture. Such a resulting tool gives great flexibility to the researcher, so that if all the dimensions are used in all of the cultures, the common underlying structure can be used to compare all cultures on the commonly used set of dimensions, or all the cultures can be compared on the culturally moderated sets of dimensions (even on those dimensions which are shown to be unique to one of the cultures). This sophisticated (and, initially, expensive) strategy is very different from simply taking some of Piaget's tests, or some American categorization tasks, translating them into the language of some other culture and using the resultant data to infer differences in underlying processes or abilities.

Readers can also come to this book with an interest in one of the researched substantive problems. A chapter extends earlier work on relationships between cultural contact and changes in auto- and hetero-stereotypes of Americans and Greeks. Other studies deal with national and political stereotypes among Japanese and American respondents, on new methods for studying "how concepts are subjectively interrelated" by Japanese and Americans, or with role-pair perceptions as seen by people from Greece, the United States, India, Peru and Taiwan. This last examination (Chapter Eight) includes a massive empirical report on progress with the behavior differential and its related tool, the role differential. This chapter describes (among other analyses) the results of 178 factor analyses. It appears to be the most germinal and suggestive of all the chapters, and other readers may join in enjoyment of page 267 where rough "Big Science" estimates judgment time necessary to "obtain a complete picture of role perception in a complex culture such as the United States."

The next-to-last chapter is a *tour de force*. Here two bicultural writers join to integrate all the collected data, across all the new and older instruments, to describe and explain "Greek subjective culture from an American point of view." But it becomes clear quickly that, given the general strategies, there would be plenty of data to also study American subjective culture from a Greek point of view, or both subjective cul-

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tures from the perspective of the shared dimensions alone!

The strategy of this book generates huge masses of cross-cultural data. Such masses must be reduced. It is perhaps sad that this reduction must rest so heavily upon linear and additive assumptions like those of factor analysis. There is also a heavy descriptive component to this research; but this by-product is well justified (see the final chapter) as grist for the interesting and ambitious cross-cultural educational aims of the researchers.

WILLIAM W. LAMBERT
*Cornell University*

Values and the Active Community: A Cross-National Study of the Influence of Local Leadership *by International Studies of Values in Politics. New York, The Free Press, 1971.—xxxii, 416 pp. $13.95.*

This book reports on a bold experiment in international social science. The authors begin with a general problem—the relationship between the values of leaders and community developmental action. Why, they ask, do some communities grow while others stagnate? Why do some communities develop a common purpose while others remain fragmented? The answer may lie in the values of the community leaders.

To test whether there is a relationship between values and development they choose four quite different countries—India, Poland, the United States, and Yugoslavia. Within each nation they choose a set of communities as the units of analysis and interview a group of community leaders, gathering at the same time information on developmental activities within the community. The research design shows a sophisticated concern with the problem of equivalence in indicators in such a heterogeneous set of nations.

The organization of the research enterprise matches the international quality of the research design. The research program was a fully collaborative effort among scholars in the four nations. The book itself has many authors, and chapters are written by different members or groups of members of the international teams.

The research design is a powerful one. If one assumes that there are uniformities in the relationship between values and community activism, there is strong confirmation, indeed, when such uniformities are replicated in such diverse nations.

But what if one finds no uniformities? Consider the following examples of the study's general conclusions: "the role of values in the determi-

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nation of social change is not uniform. . . Only in India is there a clear association of leaders' values with social mobilization. . . But in the other three countries, other determinates of development predominate. . ." (p. 14); "the results of the study of *formal* autonomy do not neatly confirm either the centralist or the decentralist positions. . . [In Poland] there is absolutely no nexus between local leaders' values and . . . community activeness, whereas in India, such a connection clearly exists. In Yugoslavia and the United States, the economic level of the community emerges as a preponderant determinant of the patterns of activeness. . ." (p. 20).

And so it goes for almost every relationship tested in the book. Variables relate one way in one country, another in other countries. Almost no crossnational uniformities are found. The conclusion of a general test of their model is striking: "The unavoidable overall conclusion is that the explanation of activism is not universal and that country differences are determinative of the ways in which variables are related to activeness. Out of the approximately 170 bivariate relationships examined in all four countries, no single variable is significantly related to activeness in all four countries. There is only one variable—the value of Conflict Avoidance—that is significant or nearly significant in all four countries, but in Poland the direction of even this relationship is different" (p. 268).

Such a result is, of course, interesting; social change may involve very heterogeneous processes and leader values may play only a marginal or varying role from place to place. Negative findings are, after all, important. But whereas the research design was such as to give confidence to uniformities (because the settings were so heterogeneous), it is one that makes the finding of differences among the nations less interesting and less convincing. Differences may be due to any one of the many inevitable differences in research design or execution in the several nations; and this is especially the case when one is working with such vague variables as "leader values" measured by agree-disagree type questions. Furthermore, negative findings are powerful when there is some established hypothesis or theory for which they are a negative case. No such established wisdom is destroyed by these findings.

In short, one winds up having learned very little about processes of development. Values do not relate uniformly to community activism, but whether that is a "real" result or an artifact of the necessarily heterogeneous measures is unclear.

Is there a moral to be drawn? Maybe, but I am not sure what it is. Perhaps one ought to have more intensive within-nation studies before embarking on crossnational research. Perhaps the choice of values as a focus and the use of the specific type of closed questions as measuring instru-

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ments was unfortunate. (My impression is that such value questions are hardest to translate and the least stable in meaning.) Or perhaps we should expect less crossnational uniformity. The latter conclusion would be important. This volume supports that position, but its manner is not completely convincing.

SIDNEY VERBA
*Harvard University*

American Policy and the Division of Germany: The Clash with Russia over Reparations *by Bruce Kuklick. Ithaca, Cornell University Press, 1972.—xii, 286 pp. $8.75.*

This book has an introduction; three chapters on wartime plans, followed by a chapter on the "Contours of Soviet-American Relations, 1943-1945"; two chapters on American policy and the Potsdam conference, followed by a chapter on "The Diplomacy of Omnipotence"; and two chapters on the early occupation and the economic consequences of the peace, followed by a conclusion on "The End of Ideology." The appendix is an essay on "Multilateralism and Revisionist Historiography."

Kuklick concludes that "Americans shaped the pattern of the early Cold War in Europe," and they caused "Germany to be partitioned in the hostile way that it was" (182). The Potsdam conference "fixed the fate of Germany." The reparations pact was "so decisive that we could justify concluding this book with an analysis of the Berlin agreements" (231-32).

Kuklick says that "the conception of multilateralism and the assumptions bound up with its use form the basis of my analysis of U.S. policy for Germany" (8). But he never defines multilateralism precisely. It is a belief (3), a design (8), a concept (11), an ideal (124), a "political and economic system" (124, 136-37, 190), an order (137), a program (140), a policy (145), a persuasion (177), a "global policy" (197), a set of principles (239), and an "essential tool for comprehending American foreign affairs" (226, 239). In its "pure form," as espoused by the State Department, it "is the single most important thread for leading one through the tangled maze of great-power strategies" (227).

Kuklick contradicts himself often. He says, for example, that the $20 billion reparations figure was being "discarded" as early as April 25, (125) and in the summer of 1945 "reparations policy took its place within the larger American program" (123). Nevertheless, the State Department's instructions to Pauley on July 2 were "still surprisingly in line with the Yalta formula" (132). "State Department policies, which were in one respect always anti-Soviet, became American policy after

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Roosevelt's death," (143) but Clay's negotiations on the level-of-industry plan in 1946 were "motivated by a desire to reach accord with the Russians, and the State Department shared this desire" (203). The United States "dictated" its reparation plan to the other Allies at Potsdam (167), but "the Allies had deferred determining [reparations] under the Potsdam accord" (196).

Kuklick's standards for measuring acceptable evidence are anything but rigid. He says the State Department declared a shift in policy in July, 1945 (116). His evidence is a memorandum from Archibald MacLeish, arguing that re-education of the German people should be the main U.S. goal. Kuklick says Byrnes was a domestic politician who "could not be expected to be conversant with the subtleties of foreign economic policy" (138), but he accepts Byrnes's interpretations of the Potsdam reparations plan (155-56).

Kuklick virtually ignores the British and the French. Both had veto powers in the Control Council, and the French used them often. Kuklick ignores the entire occupation after May, 1946. But economic unity, central agencies, and reparations had not yet been foreclosed. Reparations continued after 1946 and the Russians made reciprocal deliveries as late as May, 1948. Dismantling did occur after 1946, and it was more than "very little."

Kuklick apparently has little use for evidence that does not support his thesis. Occasionally he registers surprise at having found something that does not conform (State's reparations instructions to Pauley on July 2nd). Sometimes he acknowledges contrary evidence and then proceeds as though it did not exist (Clay's judgment late in 1945 that JCS 1067 needed no revision). At other times he accepts evidence that is obviously suspect (Byrnes's purported statement in May 1946 that the U.S. would send no more industrial plants from the American Zone to the "Soviet Union").

Kuklick's book contains a few kernels of wisdom, but only those readers versed in the documents will succeed in separating them from the chaff.

JOHN GIMBEL
*California State University, Humboldt*

The Semblance of Peace: The Political Settlement After the Second World War *by John W. Wheeler-Bennett and Anthony Nicholls. New York, St. Martin's Press, 1972.—xiv, 878 pp. $35.00.*

". . . these Americans represent the new Roman Empire," Harold Mac-

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millan told his staff in 1943, "and we Britons, like the Greeks of old, must teach them how to make it go" (p. 70, n). The tragedy of World War II, according to Wheeler-Bennett and Nicholls, lay in the American refusal to accept British tutelage. Throughout the war, Franklin Roosevelt rebuffed repeated English attempts to coordinate Anglo-American diplomacy toward Stalin's Russia in the belief that he could deal personally with the Soviet dictator. The authors portray Winston Churchill and Anthony Eden as farsighted statesmen who perceived the Soviet menace but who lacked the power to change the course of events. They are almost as extravagant in their admiration for Harry Truman and Dean Acheson, whom they credit with adopting the containment policy barely in time to halt the Russian leviathan.

This curiously old-fashioned account of peacemaking repeats all the clichés that historians have tried to correct for the last two decades—a naive FDR acting out of "euphoric vanity" (p. 296), a rapacious Russia bent on world domination by means of "conquest, malfeasance, duplicity, mendacity, obstruction, cajolery and intimidation" (p. 286), and the indomitable Churchill displaying "the wealth of wisdom derived from half a century's experience of politics" (p. 290). The authors dismiss revisionist accounts of the cold war in one brief footnote that impugns the scholarship of Denna Fleming and Gar Alperowitz (p. 557, n.) and they ignore the convincing reappraisal of the president's wartime leadership that James MacGregor Burns provided in *Roosevelt: The Soldier of Freedom* (New York, 1970).

The book's single virtue lies in its comprehensive treatment of all aspects of peacemaking, ranging from the statement of war aims in the Atlantic Charter through the wartime conferences at Teheran, Yalta, and Potsdam down to the Japanese peace treaty and German rearmament in the 1950s. Relying heavily on English and American memoirs and government documents, the authors present lucid accounts of a wide variety of diplomatic events and are quite successful in relating them to earlier developments, particularly to the Versailles settlement. Their focus is on Europe, with some mention of Japan, but they include virtually nothing on China, Southeast Asia, or the Middle East. The authors employ a topical approach, with frequent cross-references to guide the reader through the maze of World War II developments. They write exclusively from the perspective of the victors, ignoring German and Japanese sources for the war years and Soviet materials for the cold war period. The result is a massive but flawed summary of the efforts to make peace during and after World War II.

ROBERT A. DIVINE
*University of Texas, Austin*

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The Papers of Alexander Hamilton, Vols. XVI and XVII, *Harold C. Syrett, ed. New York, Columbia University Press, 1972.—Vol. XVI, xvii, 664 pp. $15.00; Vol. XVII, xiii, 620 pp. $15.00.*

These two volumes of the Hamilton Papers cover the concluding period of Alexander Hamilton's tenure as secretary of the treasury from February to December 1794. Three problems preoccupied Hamilton during these months and account for most of the data reprinted herein: Treasury Department affairs, preservation of peace with Great Britain, and the suppression of the Whiskey Rebellion. The routine administration of the Treasury is most heavily documented, as the Secretary supervised the receipt and disbursement of funds, enforced the customs laws, judged claims against the government, negotiated loans, and oversaw key Treasury personnel. Hamilton, however, confronted also a congressional investigation of his conduct in office inspired by political critics. Though Hamilton emerged fairly unscathed, on one issue he faced rough going: whether or not the president had authorized him to draw into the United States funds borrowed abroad under the 1790 funding legislation. At first Hamilton claimed executive privilege and denied that Congress had any right to inquire about "the competency of his authority from the President," but such claims carried less weight in the early days of the republic than later. Hamilton, therefore, tried to demonstrate that Washington, had, in fact, instructed him, but despite insistent prodding, the president failed to supply the necessary supporting testimony.

This incident did not diminish the dominant role Hamilton played in the cabinet, a role that led him to become deeply involved in foreign affairs and in handling the Whiskey Rebellion. Both within the inner circles and in the press, Hamilton cogently argued against risking a war with Britain at a time when the British were seizing American ships trading with the French. Yet while Hamilton looked for a peaceful settlement to be negotiated in London by his friend, John Jay, he energetically carried out congressional policy to enlarge the navy.

The Whiskey Rebellion preoccupied Hamilton during his final months in office. He relished this opportunity to crush with overwhelming military force the chronic resistance to the whiskey excise among the farmers and distillers of western Pennsylvania. When Washington decided to call out the militia of three states, Hamilton eagerly jumped at the chance to lead the troops sent to crush the rebels. What is perhaps curious about this incident is the apocalyptic reaction of the secretary of the treasury who saw in the Pennsylvania protests the clearest evidence that anarchy and treason threatened the republic. In his zeal, he lumped together those who *spoke* and *wrote* against the excise with those who

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took up arms against the tax collectors. He also was quick to smear with the brush of subversion politicians who questioned the means ultimately chosen to enforce the law. The entire Whiskey Rebellion, which is heavily documented both in the texts reprinted here and in the superb editorial footnotes, calls for fresh investigation. Though Hamilton's alarm may seem excessive, he viewed the disaffection in Pennsylvania in the larger context of a deepening national division over the French Revolution and over how to preserve American neutrality. He also saw it as one of a series of challenges to federal authority from the peripheries: the restlessness of Kentuckians and others seeking freedom to navigate the Mississippi and the impatience of Georgians with the pace at which the federal government was removing Spanish and Indian obstacles to the state's development. In both cases, as in Pennsylvania, those challenging federal authority were not rabble but farmers and other small property holders led by local elites, including officeholders, who believed that the national government was insensitive to their interests. Standing out in bold relief among Hamilton's letters, most of which involve government affairs, are his tender letters to his wife at a time when one of his young sons was seriously ill.

In these works, as in the preceding fifteen volumes, the editors have done a first-rate job. Though the notes are often quite lengthy, they make readily accessible pertinent data buried in newspapers and in other manuscript collections that consistently illuminate the documents. The editorial commentary greatly facilitates using the Hamilton Papers, and helps to make them not only the key source for the career of the first secretary of the treasury but one of the most valuable printed sources for the history of the early republic.

PAUL GOODMAN
*University of California, Davis*

Slavery and the Annexation of Texas *by Frederick Merk. New York, Alfred A. Knopf, 1972.—xiv, 290 pp. $8.95.*

The South and the Concurrent Majority *by David M. Potter. Baton Rouge, Louisiana State University Press, 1972.—viii, 89 pp. $4.95.*

In separate-but-unequal reconsiderations of slavery's impacts on nineteenth-century national politics and constitutionalism, two greatly respected, mature historians came into print in 1972 at the heights of their respective careers. Their two books offer insights into the wide ranges

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of methods presently available to scholars, as well as to individual historians' perceptions and exploitations of these alternatives.

The first of the two volumes reviewed is Frederick Merk's *Slavery and the Annexation of Texas*. Now a distinguished emeritus professor, Merk, born in 1887, is pace-setting interpreter of the politics of American territorial expansionism. His numerous scholarly contributions on this theme earned Merk his eminent endowed chair and the gratitude of all serious students of American history. But *Slavery and the Annexation of Texas* does not add to this indebtedness.

*Slavery*'s flat effect (as I gauge matters) derives in part from the familiarity of its theme. Merk's 1972 volume is strikingly like a continuation of his 1971 book on high-level propaganda efforts in the Tyler administration directed toward the annexation of Texas as a state. *Slavery* fails to convince that Washington D.C. leagued with Washington-on-the-Brazos to arrange public opinion in a manner to sustain Texas's annexation and, consequently, slavery's imperial enlargement.

Viet Nam has made the Beardian game popular again of alleging propaganda as a primary ingredient in public policy formulation, especially war causation policy. This may be a valid judgment to make on Tyler and on those close to him who wished to protect slavery as a social, racial, and economic system, by annexing Texas. But Professor Merk has not proved the point.

Skepticism concerning his thesis derives partially from his uneven balancing of some evidence. For example, concerning Henry Wise's 1876 recollection of Calhoun's appointment to Tyler's cabinet, Merk (p. 54) cautions that the reader must remember that many years had intervened between the event and its publication. But Merk offers no caution (p. 16) concerning use of the 1866 publication of Duff Green's 1843 views on and involvements in slavery-Texas matters. Considering the fact that Green came into print just as immediate emancipation was made all but irreversible (an event wildly improbable in 1843) and when national civil rights for blacks as a necessary and proper consequence of freedom were rising to the forefront of politics, unqualified acceptance of Green as source is remarkable.

Further, I worry whether Americans of the 1840s had forgotten John Adams's maritime bellicosity when President concerning France, and accepted as constitutionally absolute a need for congressional participation in the exercise of "war powers" (p. 55). And I wonder at the suggestion (p. 181) that patterns of territorial annexation were already so familiar in the 1840s as to raise general concern about the deviation from a norm in the Texas instance. Perhaps. But the evidence fails to support the idea that in a nation fifty years old, annexation and state-

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making procedures, themselves extraordinary, should have rated such reverence and have achieved such familiarity.

In sharp contrast, the late David Potter (1910–1971), in his *The South and the Concurrent Majority*, created a far more stirring presentation and convincing synthesis. The Fleming Lectures at LSU, Potter's slim volume, excites because it places slavery and derivative race-relations imperatives, plus political, and government institutions in reasonably realistic conjunctions. Potter estimates the nineteenth-century Southern ascent to and grimly tenacious retention of Orwellian primacy and out-of-scale advantages in national policy formulations including Texas's annexation, of course. After analyzing regional views on race as the central theme in Southern history, Potter attends to the fact that national politics and parties, so despaired of by Calhoun because of democracy's maverick ways, bent after all to drillmasters with Southern drawls. Further, he notes more tellingly than existing monographic scholarship has managed to do, the many ways in which the region's congressional delegations fattened symbiotically on the Congress's altering committee and Speaker institutions and filibustering procedures, overcoming less tenacious opponents. Moving into the near-present, Potter suggests how this Southern weight served almost to our own time to hold to almost catatonic stillness machineries for more decent ways. This volume, Potter's final publication, is his monument, and it illuminates history's dim terrains.

HAROLD M. HYMAN
*Rice University*

Abolitionism: A New Perspective *by Gerald Sorin. New York, Praeger Publishers, 1972.—187 pp. $7.50.*

Bound with Them in Chains: A Biographical History of the Antislavery Movement *by Jane H. Pease and William H. Pease. Westport, Conn., Greenwood Press, 1972.—xvii, 334 pp. $12.50.*

Antislavery has received so much specialized attention in the past decade that a new general survey might be useful. Each of these books attempt to serve that purpose: Sorin's through a "brief synthesis of recent scholarship" and the Peases' out of extensive research in the lives of abolitionists.

Sorin's *Abolitionism* moves swiftly through numerous topics: the motives of abolitionists, attitudes toward slavery in the seventeenth and

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eighteenth centuries, the emergence of radical viewpoints in the 1830s, instances of nonviolent action, political movements, black militance, public reactions to agitation, and the involvement of reformers in the Civil War. Sorin is most sound on nonviolence and black abolitionists, but on other topics he is not a reliable guide to recent scholarship. The book is poorly written and lacks the control over evidence that is indispensable in a brief survey. Its passages on religious and intellectual history are particularly disconcerting: revivalism, for example, is nearly reduced to a secular reform movement teaching pacifism and social justice (pp. 45, 81). Moreover, the book tends to regard complex issues of motivation and behavior as though they were simply problems scholars have solved.

Historical understanding of antislavery, war, and reconstruction is inevitably relevant to recent American experience. Sorin's desire to exploit that relevance, however, leads to dogmatism and confusion. Neither past nor present is elucidated by this kind of flourish: "Like the more modern black militant Eldridge Cleaver, many abolitionists believed that a person or institution that was not part of the solution was part of the problem" (p. 71). Can Sorin reconcile his apparent preference for "moral suasion" with his criticisms of abolitionists for failing to demand "large-scale social planning" and "massive social engineering" (pp. 156–57)? These shibboleths of twentieth-century liberalism seem to imply that nineteenth-century reformers should have advocated coercion on a scale that would have horrified even their contemporaries who were not committed to moral suasion.

Sorin tries, with limited success, to employ sociological methods to account for the backgrounds of reformers. *Bound with Them in Chains*, though presenting itself as a "collective biography," attempts no systematic analysis of the lives and experiences it recounts. The authors provide ten portraits of antislavery figures with a slight two dozen pages of introduction and a dozen pages of "reflections" at the end. Three of their ten portraits—Cassius M. Clay, Benjamin Lundy, and Joshua Giddings—have received recent scholarly biographies. The most effective chapters track down obscure figures: Hiram Wilson, an incompetent who was rejected coldly by antislavery administrators in New York, and Samuel Eli Cornish, a black abolitionist whose leadership was impeded by inconsistent attitudes toward race and reform. The ten portraits are not unified by theme or approach, and no general view of antislavery emerges from them—except that it revealed human diversity. It is sometimes unclear whether the traits of a particular reformer, for example Samuel Joseph May's feelings of brotherhood toward Negroes, are discussed because of their uniqueness or representativeness. The Peases observe (p. 22) that divisions among abolitionists did not follow "neat

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cleavages along geographical, economic, or religious lines." But they evidently retain a belief in a neat cleavage between the followers of William Lloyd Garrison, toward whom they are repeatedly unsympathetic, and other abolitionists, toward whom they are more charitable. A one-sided portrait of Maria Weston Chapman stresses her imperiousness almost to the exclusion of other aspects of her career. A chapter on Elizur Wright exposes his contempt for Garrison and determination to war on Garrison's friends, then faults the Bostonians for rebuffing his conciliatory gestures. The Peases evaluate Giddings' tenure in Congress as though it was an antislavery tactic unmixed with ambition; even so, they are curiously defensive: "that his [Giddings'] choice of method was less efficacious than that of the evangel in creating a moral consensus remains still to be proved" (p. 275). They plainly dissent from the arguments of other historians, including Richard Hofstadter and Aileen Kraditor, that agitation is a necessary recourse for minorities who lack political power and that the labors of the "evangel" can complement those of politicians, but they do not offer sustained counterargument. The concluding "reflections" introduce themes that might have unified the book, but are entered too cursorily and too late.

The Peases show a keen eye for pathetic or ugly details in individual lives. Sunny moments, rewarding relationships, happy triumphs, and well-balanced lives elude their study. In effect they portray a defeated movement. Clearly they will have no part of the neo-abolitionist mood of the 1960s that glorified a legacy allegedly belonging to freedom-riders and sit-inners. Although Gerald Sorin refers grandly to the abolitionists' "immeasurable contribution to the tradition of radical reform in America" (p. 20), he too stresses compromises, frustrations, and defeats. In fact he echoes an unpleasant recent tendency to suggest that the present condition of blacks is so bad that emancipation was meaningless. Abolitionists failed to control their times or to achieve all of their desires. *Abolitionism* and *Bound with Them in Chains* are, in different ways, both haunted by that failure.

LEWIS PERRY
*State University of New York at Buffalo*

Leon Trotsky on Britain, *introduction by George Novack. New York, Monad Press, 1973.—332 pp. $8.95.*

This book is an amalgam of three elements. The first is a reprint of *Kuda idet Angliya?* (*Where Is Britain Going?*), which was published

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in the Soviet Union in 1925, or rather of the American edition that appeared later in that year as *Whither England?* The second element comprises more of the same: (a) Part 2 of the above, published in the latter part of 1926; (b) some occasional pieces (here translated by Julia Drayton) that mainly constitute replies to criticisms of Part 1; (c) a collection of such criticisms, primarily in the form of book reviews. Unlike the first two elements, the third is made up of pieces (1926–28) unpublished in the Soviet Union but apparently circulated from hand-to-hand in typescript. Among its miscellaneous contents is the first English translation (by George Saunders) of the resolution on the General Strike prepared by Trotsky and submitted in July 1926 to the plenum of the C.P.S.U. with the support of a number of others, including Zinoviev.

It is hard, now, to know where to begin. First, taking up the historian's question, one might ask: Was Britain going where Trotsky said she was going? "England is headed for revolution because she has already entered the stage of capitalist disintegration" (p. 24). Concomitantly, the Communist party would grow, at first "rather slowly" but then with a spurt as the "ineluctable crisis" ensued (p. 142). As a result the Communist party would supplant the Independent Labour party in what Trotsky (falsely) believed was its leadership role vis-à-vis the Labour party proper. Nothing of the sort has happened, despite Britain's supplanting by the United States (which Trotsky made much of), a second devastating war, and the loss of empire, which should have accelerated the "disintegration" and provided some revolutionary opportunities. One is tempted to say that everything has happened to Britain since Trotsky wrote except the revolution—and the serious revolutionary party —he predicted.

Among the many sources of this failure was Trotsky's apparent inability to grasp the political culture of the country whose future course he was predicting. His contempt for and underrating of British parliamentary democracy and the influence of religion on the ethos of the British Left form a persistent theme in these pages. This leitmotif provides a good example of the power of a set of beliefs to determine the perceptions of an intelligent man (the book, thus, has some interest for the political theorist and political psychologist as well as the political scientist and historian). Trotsky can perceive the Chartists, for instance, but screens out the Nonconformists; yet it was a general secretary of the Labour party who said that its inspiration came from "Methodism not Marxism." Religious influence may also explain in part the unwillingness of the Left to endorse Trotsky's dictum that a "disbelief in violence is equivalent to a disbelief in gravitation" (p. 82). As to parliamentary democracy, Trotsky's view was a special case of his general proposition

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that in "England, as well as elsewhere, poverty never has succeeded in getting anything from wealth except as it took the latter by the throat" (p. 67). In the name of poverty the Labour party has taken quite a bit from wealth, and by peaceful parliamentary means. So Marx was nearer the mark than Trotsky: late in life (in that speech at Amsterdam), he did come round to seeing England as one of two or three countries where socialism could be achieved constitutionally.

Still, scholars of several kinds will find this collection useful. Students, however, would have to be warned that Mr. Novack is as far from being a model of objectivity as Trotsky was.

GRAHAM WOOTTON
*Oxford University*

Vichy France: Old Guard and New Order, 1940-1944 *by Robert O. Paxton. New York, Alfred A. Knopf, 1972.—xix, 399 pp. $10.00.*

Can anything new be said about Vichy? So much has already been written about this brief interlude in French history that one is tempted to answer with a flat "no." But that temptation quickly dissipates as one gets into Robert Paxton's absorbing book. He has given us not only the most readable account of that curious and complex episode, but also the most thoughtful, provocative, and thoroughly documented study now available. For those whose interest has been whetted by Marcel Ophuls' great documentary *Le chagrin et la pitié*, Paxton's book will provide an equally fascinating reassessment of what Vichy was all about.

Paxton's major source of fresh information is the voluminous file of captured German documents, utilized hitherto only in somewhat haphazard fashion or for certain special inquiries (*e.g.*, Alan Milward's study of the Vichy economy). Paxton's careful examination of these materials explodes a good many myths that have been zealously propagated by certain ex-Vichyites, and that have gained rather wide acceptance. Among them are the legends of Vichy's "double game" and of the regime's merely passive, reluctant acceptance of distasteful German demands. Paxton's purpose is "to restore Vichy's initiatives to view" (pp. 47-48); to demonstrate that collaboration within Hitler's new order was an active French concept pushed vigorously and persistently by every major figure at Vichy from 1940 through 1943 and perhaps even beyond. Laval's fall in December 1940 and his return to power in 1942 represented no break in continuity, for Pétain and his entourage were no less eager for that elusive general settlement that Hitler steadily evaded. Others before Paxton have argued this case, but no one has documented it with such persuasive force.

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Historians have often credited Vichy with abandoning the collaborationist line halfway through the occupation, and turning to the protective double game to soften German exactions. Paxton's evidence shows that Pétain and his backers clung to their illusions at least through 1943; they hoped that a compromise peace might be arranged between the Germans and the Anglo-Americans, with France serving as a kind of honest broker. These illusions grew mainly out of their obsessive fear of social disorder. They saw the resistance movement as "a step toward social revolution" (p. 286); armed liberation from without and within was more frightening than collaboration with Germany in a new Europe. If vast numbers of Frenchmen eventually switched from *Pétainisme* to *attentisme*, that did not include the Vichy elite; the real *Pétainistes* knew which side they were on. Revolution was worse, far worse, than defeat.

A second long section of the book skillfully dissects Vichy's conception of the "national revolution." Here the German documents are less helpful; Paxton relies more heavily on memoirs and monographs. He sees Vichy as much more than a mere rootless and fruitless interlude, but rather as "a link between the incipient civil war of the 1930's and the social transformations of the postwar years" (p. 49). Although this theme is not completely novel, it has never been argued more cogently. Paxton is particularly good on the contrasts between the "traditionalists" around Pétain and the bureaucrats and technicians who soon took over and sought to reshape state and society (with some durable results). The traditionalists, he contends, were foredoomed to failure by their own irrelevance. It was they rather than the technicians who suffered most in the postliberation purge, and their ideas were even more thoroughly discredited. "It was the Vichy experience that stripped the veil from French antimodernism by letting it come to power" (p. 273). Somewhat less convincing is Paxton's novel thesis that "the National Revolution was a heresy of Third Republic liberal and progressive doctrines," rooted in the Enlightenment and in nineteenth-century middle-class values rather than in the soil of *ancien régime* reaction and its later exponents.

What of the oft-argued thesis that Vichy was a lesser evil, a shield protecting Frenchmen against "Polandization"? Paxton's answer is categorical: supported by comparative statistics from other occupied western nations (and even some in eastern Europe), he shows that France was no better off than they, and in most respects suffered worse exactions. Not only does he demolish the shield theory; he contends that in fact "the sovereignty of Vichy was a negotiating liability rather than a negotiating asset" (p. 374). Vichy was so eager to preserve its own existence that it kept making one concession after another. "A gauleiter would have made many Frenchmen suffer; in the end he might have gotten less" (p. 374).

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Paxton's "moral balance sheet" is devastating. France alone, of the major occupied countries, seized the occasion to restructure its domestic institutions. Vichy was thus no mere caretaker regime, despite later claims; it "waged another round in the virtual French civil war of the 1930's" (p. 381). The effect was to exacerbate and prolong France's internal divisions. Besides, Vichy brought a corruption of values; a sizable sector of the nation's elite was drawn into complicity with Nazi excesses. Through blind adherence to the existing social order, more profound moral issues became obscured. The Vichy experience thus suggests a troubling lesson. "There come cruel times when to save a nation's deepest values one must disobey the state. France after 1940 was one of those times" (p. 383). Surely Frenchmen are not the only ones who need to ponder that lesson.

GORDON WRIGHT
*Stanford University*

Hitler's War Aims: Ideology, the Nazi State, and the Course of Expansion *by Norman Rich. New York, W. W. Norton & Company, 1973.—xliii, 352 pp. $10.00.*

This is the first of two volumes on the expansion of Nazi Germany. A second one, entitled *The Establishment of the New Order*, will follow. The title of the present volume is somewhat misleading. While the book deals with Hitler's foreign and military policy to the end of 1941, the sequel "will be devoted to an examination of the policies Hitler actually pursued in dealing with all the peoples and territories which came under his dominion . . . as well as his plans for the future of these peoples and the lands they inhabited" (p. xv). The second volume, it seems, will thus have more on Hitler's war aims than the first.

The early chapters of the present volume provide some useful background information. After a short introduction, placing Hitler and Nazi Germany in a wide historical and moral perspective, Professor Rich deals briefly with Hitler's racist and expansionist ideology and at greater length with the political system he imposed upon Germany. These first chapters are disappointing compared with the excellent treatment their subjects have received in Eberhard Jäckel's *Hitlers Weltanschauung: Entwürf einer Herrschaft* (Tübingen, 1969), and Karl Dietrich Bracher's *The German Dictatorship: The Origins, Structure, and Effects of National Socialism* (New York, 1970). Not only are there errors and inaccuracies (for example, Hitler did draw his salary [p.x]); he was not

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extradited to Austria as a draftdodger (p. xxxv); he never used the title Reich president (p.25); it was not Gregor Strasser but his brother Otto who left the party and fled abroad (p.20); Hierl was not party labor leader (p.41)—but Rich tends to lose sight of his stated aim; to focus on the Nazi state as the machinery for Hitler's expansion and the model for his "New Order." Instead he goes into irrelevant detail (on the Röhm, Blomberg and Fritsch crises, for instance), which distracts from his main theme.

The major portion, about two-thirds of the book, deals with Hitler's "course of expansion." On the "peaceful" phase, to September 1939, there is not much that cannot already be found in earlier books, notably Gerhard L. Weinberg's *The Foreign Policy of Hitler's Germany: Diplomatic Revolution in Europe 1933-36* (Chicago, 1970), and Hans-Adolf Jacobsen's *National-sozialistische Aussenpolitik 1933-1938* (Frankfurt/Berlin, 1968). There are some omissions (no mention is made of the Saar plebiscite of 1935; or of Italy's refusal to join her German ally at the start of the war; or of Hitler's 16-point "offer" to Poland at that time), and some misleading statements, such as that Germany's nonaggression pact with Russia had been "under negotiation since the spring" of 1939 (p.127). As the narrative moves into the war years, however, it becomes more interesting and original. Dealing with the military phase of Hitler's expansion, Rich tells an absorbing story of Germany's relentless drive in every direction and provides a vivid account of the relations between Hitler and his newly acquired subjects and satellites. The volume ends with Hitler's ill-fated declaration of war against the United States on December 11, 1941.

The book is based on a wide range of sources, most of them published. It is surprising that the author did not use the microfilms of the German Foreign Ministry documents at the National Archives, Washington, D.C., which contain much that cannot be found in the published volumes of German documents on which he has relied. Among secondary works, one misses the still useful and certainly relevant volume by Arnold and Veronica M. Toynbee, eds., *Hitler's Europe*, in the Royal Institute of International Affairs' *Survey of International Affairs 1937-1946* (London, 1954). Other than that, the bibliography is admirably comprehensive. There are also some well-chosen illustrations and excellent maps. The fact that this volume gets better as it moves into less explored areas holds great promise for the second volume yet to come.

HANS W. GATZKE
*Yale University*

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Fascist Italy *by William Ebenstein. New York, Russell and Russell, 1973.—x, 310 pp.* $18.00.

Executive privilege and political oppression go hand in hand. Those who invoke it most insistently imply a political *droit de seigneur,* to be used at executive discretion, against ordinary citizens, their elected representatives—even against their judges. Freely and impudently exercised, executive privilege easily results in large-scale perversion of men and institutions.

Italy experienced it during the Fascist era. Having attained power via an arrogant disregard for a young nation's laws, Benito Mussolini and his cohorts cynically redefined the rules of politics and destroyed organizations and institutions that might threaten their hegemony. Fascists murdered political opponents and Mussolini openly boasted of these deeds in parliament; parliament itself was eventually castrated and transformed into a compliant Chamber of Fasces and Corporations; political parties other than the Fascist were outlawed and non-Fascist trade unions and similar organizations were driven out of existence. The Fascist Grand Council successfully claimed collective executive privilege, placing its members above the law and making them accountable only if they so consented. Against those who might still offer opposition, the Fascists created the Special Tribunal whose kangaroo proceedings became Italian Fascism's hallmark. All of these things and many more were done in the name of the nation, its sovereignty, its need for security, and its imperial destiny.

It is fortuitous but entirely fitting that William Ebenstein's prophetic volume, first published a few months before the Nazi invasion of Poland, should be reissued in the midst of America's Watergate agony. The author's explication of Fascist doctrine; his careful analysis of Fascism in power and the rationale the Duce and others used to justify their riding roughshod over fragile democratic institutions; his striking depiction of the arrogance and disdain the Fascists manifested toward the sanctity of basic laws and the rights of citizens—all are ominously echoed in testimony before the Ervin Committee and in lawyers' briefs offered in the name of the president.

Portions of Ebenstein's book are dated but nevertheless establish that he understood that war and systematic preparation for it were the cornerstone and the outcome of Mussolini's madness. It is another of those inexplicable historical ironies that behind the façade of system, order and precision there continued to reign in Italy deeply rooted political corruption and bureaucratic incompetence and slovenliness. Ebenstein himself seems to miss this point and therefore to overstate some-

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what the totalitarian nature of Fascist Italy. On the other hand, his step-by-step empirical demonstration of how little Fascism had achieved and indeed how disastrous its policies were for the material well-being of Italians is quite impressive.

The most enduring and immediately relevant aspects of this book, however, involve corporativism in theory and practice. Ebenstein notes that corporative schemes are not inherently incompatible with democracy and that, indeed, they are often intended to make political participation and representation more effective. This is not the way it worked out in Italy. The system of corporations clearly stifled pluralistic impulses; rather than free the ordinary citizen for meaningful political involvement, the corporation served to discipline him and thereby to keep his initiative and energy within narrowly prescribed bounds. Along with basic changes the Fascists made in Italy's prefectorial, educational, judicial, and police systems, corporativism was designed to assure the dominance of the Fascist party.

In these days when political scientists write about political convergence, discover "pluralism" in Soviet-type countries, and sing the praises of "workers control" and "self management" in Yugoslavia, Ebenstein's book gives strong reason for pause and reflection. Neither Italian Fascism nor contemporary patterns in Yugoslavia show the way to actual, more effective political participation by the masses. The same domination of political life by a limited group of bureaucrats that Ebenstein displays for Italy in the 1930s seems remarkably like the patterns we find in the more advanced one-party systems of the 1970s. Under Fascism Italy was well on the way to becoming a successful or "established" one-party state; the structural consequences of the corporativistic scheme was to make that task easier and permanent. That goal was interrupted not by any inherent weaknesses or contradictions within the corporative scheme itself but by a major war and Italy's fatal choice concerning it.

Ebenstein correctly notes that Fascist corporativism is a misnomer, as misleading in its implications as were the incredibly muddled Fascist statements about the nature of the Italian economy. He notes, too, that Italian big business' relationship to the Fascist party, while superior to that of ordinary workers, was by no means that of puppet-master. Indeed, postwar research underscores the great tensions that existed between party and industrial organizations. The corporative state increasingly became inextricably tied to the Fascist party, outside of which few really important binding decisions were made. The essence of that arrangement is the conversion of citizens into subjects, of rights into duties, of relatively free persons into those who do the bidding of party bureaucrats. The latter of course rule in the name of the state, nation, dictator-

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ship of the proletariat, national security, or what have you.

It will do us all a considerable service to re-read Ebenstein, or to look at *Fascist Italy* for the first time.

JOSEPH LAPALOMBARA
*Yale University*

The Changing Party Elite in East Germany *by Peter C. Ludz. MIT Press, 1972.—xxi, 493 pp. $15.00.*

This book is the long-awaited abridged English translation of *Parteielite im Wandel* which will make Ludz's classic study of the East German elites accessible to a broader American audience. Originally published in 1968, this work was an instant success and a trail blazer in method and approach to a more sophisticated understanding of the DDR and of Eastern European states in general. It is extraordinary how the passage of a mere five years has changed its role in the scholarly world. Not only has Ludz's approach been thoroughly accepted, even canonized as part of the establishment point of view, its author now prepares the annual *Materials on the State of the Nation* for the Brandt government, an excellent comparative source on East and West German institutions—but the DDR itself is viewed far more kindly than it ever was without necessarily having undergone any further profound, endogenous changes.

As the author sets forth in his introduction to the American edition, there are three aspects to his analysis, the "social structure" of the SED party elite, 1954–67, the bureaucratic organization of the regime, and the ideological system. The extraordinary social and economic modernization of the 1960s have added social and political conflicts to the antagonisms already inherent in the changing party elite suspended between sectarianism and the "performance principle" of an industrial society. As observed in other Communist systems, therefore, the regime has become authoritarian rather than totalitarian, that is, no longer based on mass terror. But the party elite never lost its capacity for governing, for "integrating" these discords, and for further modernization. These qualities are all the more remarkable in the light of the changing character of the SED. Somehow it manages to keep under the same discipline the still dominant older generation of sectarian, utopian Communists whose background reaches into the 1920s and earlier, and the increasingly technologically oriented, and hence rather pragmatic, newer generations. Here is a close-up picture of what may well be happening in all advanced Communist systems as the party of utopian revolution becomes a party of industrial technocrats oriented toward the administration of an increasingly differentiated industrial empire.

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It is for this reason also that the author's treatment of Communist ideology in this context makes for intriguing reading. Ludz demonstrates the range of ideological attitudes from revisionists to dogmatists in the SED by using the concept of alienation as a text. Alienation is central to revisionist thought but meets with confusion and even disapproval among the dogmatists. How can there be alienation in a socialist society? Ludz also sheds some light on the strange marriage of communism and cybernetic theories, a *misalliance* that has left neither dialectical materialism nor cybernetics happily improved. The more plausible of cybernetics uses, as the author demonstrates, rebound in favor of Communist organization, information systems, and decision-making; this is, in fact, how it is being used.

The latter considerations bring us back to the author's classification of the DDR. Totalitarianism aside, there are various kinds of authoritarianism even including some that feature strong elements of democratic participation. The East German system, however, is not one of them. Its authoritarianism, instead, relies on expertise to feed the necessary information into the decision-making model. This "consultative authoritarianism," has had, in reality, to rely more and more heavily on experts as the economy took off and developed in the direction of a more and more advanced and complicated system. Thus the shift from the old utopians to the young industrial managers was at the same time one toward the increasing reliance on experts, much in contrast, say, to China where it is still far more holy to be "red than expert."

*The Changing Party Elite* is a must for any collection on contemporary East Germany or on Eastern European Communist regimes. It is to be hoped that it will inspire other scholars to keep up the in-depth observation of the evolution of Communist regimes.

PETER H. MERKL
*University of California, Santa Barbara*

Roman Dmowski *by Andrzej Micewski, Warsaw, Wydawnictwo "Verum," 1971.—422 pp.*

The stature of Roman Dmowski unquestionably occupies a prominent place in the recent history of Poland. In the Polish politically minded circles he is usually counteropposed to Josef Pilsudski, although he suffered the discomfort of remaining in the shadow of his rival. In spite of a great number of admirers and political disciples, abroad and in Poland, no critical work thus far has appeared on Dmowski. The work of Jedrzej Giertych (*Rola dziejowa Dmowskiego*, tom I, Chicago, 1968);

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of Mariusz Kulakowski (*Roman Dmowski w swietle listow i wspomnien*, tom I, London, 1968); and of Tadeusz Bielecki (*W szkole Dmowskiego*, London, 1968) not to mention the numerous brochures and articles published for the centennial of Dmowski's birth in 1964, fall short of expectation.

Therefore, the book under review should be welcomed by students of Polish political history, Polish politics and in particular, of Polish political philosophy. It is a concise study of the life, political activities, and political ideology of Dmowski; its author already distinguished himself by a monograph on the ideology of Jozef Pilsudski's followers (*W cieniu Marszalka*, 1968) and other publications on prewar Poland. The present work is intended for popular consumption, hence its digestible size. Based on primary sources, published and unpublished, Micewski's work is well constructed and written in a lively style. Following a chronological sequence of events, Micewski attempts to portray Dmowski as a political activist, a political theorist, a politician, a publicist, a statesman, a diplomat, a member of the Russian Duma, a novelist, and an outstanding personality.

The author, however, is primarily interested in the political aspect of Dmowski's life. This approach, which would appear natural to any biographer of Dmowski, renders the biography lopsided. But even Dmowski as a "political animal" causes perplexity to the author. The reader can sense from the very beginning of Micewski's work that he does not love his hero; he himself admits at the end of the book that he has been disenchanted with Dmowski. So were many of Dmowski's followers, whose reminiscences Micewski frequently quotes. Many of Dmowski's disciples were disappointed with his refusal to take an active part in Polish politics between the wars. They seemed to be waiting for a decisive move by Dmowski, but he never moved. Micewski cites extensively from an unpublished "Diary" of one of Dmowski's associates, Julian Zdanowski (pp. 301–305), who under the date of July 20, 1928, observed that Dmowski was "finished" politically. This view was shared by many others.

To the author the most important work of Dmowski is the geopolitical essay: *Russia, Germany, and the Polish Question* (1908). Micewski praises Dmowski not only for the originality of his theory, but in general, for his ability to formulate political conceptions independently of the "tribal" opinion in his environment. Throughout the book Micewski repeatedly states that Dmowski was an outstanding personality and original thinker, however this assessment does not prevent him from blaming his hero for making wrong political judgements or laboring under erroneous assumptions. Micewski further criticizes Dmowski

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for conducting Polish politics in the Second and Third Dumas in a manner that was inconsistent with his proclaimed objectives. Dmowski ostentatiously took the mandate to the Duma to wrest from the tsarist government concessions for Poland; he was to use the Russian Duma as a forum for the Polish cause. That Dmowski failed to accomplish anything for Poland in St. Petersburg has been pointed out by others in addition to our author. Micewski seems to be amazed at Dmowski's lack of political realism and inability or rather unwillingness to exploit his privileged parliamentary position to the advantage of his country. At the time when the tsarist regime was backed against the wall, after the unsuccessful war with Japan and a revolution at home, Dmowski, instead of pressing the Russian government for concessions for Poland, cast the votes of the Polish *Kolo* in support of the government, asking nothing in return. Such a manifestation of loyalty, regardless of Dmowski's political scheme, led the Russian regime to take the Poles for granted, baffled the Russian opposition parties, and did not advance the Polish cause in world opinion. Micewski contends that Dmowski would have done better had he joined the opposition in the Russian Duma. Micewski cannot forgive Dmowski for his inability to perceive the revolutionary spirit of his time, and to recognize a revolution as a means or a factor in the restoration of the statehood of Poland. Micewski holds against Dmowski that he rejected terrorism or subversion, methods advocated by the Polish Socialists, in the struggle against the tsar. Micewski writes (p. 144) that even when Dmowski criticized the Russian administration in Poland, the thrust of his criticism was not a declaration of war against the regime but an expression of loyal cooperation. This policy, as Micewski argues, had a demoralizing effect on the Polish subjects of the tsar who atavistically were hostile to him, with an equal degree of mutuality. Dmowski was so convinced that his policy of loyalty towards Russia would produce the expected beneficent results for Poland that he surrendered the Polish mandate to the Duma, when the Polish political circles demanded him to change his position.

The well-known trip of Pilsudski and Dmowski to Japan in 1904 is fairly and interestingly narrated by Micewski. As we know, Pilsudski, whose militant actions against the Russians Dmowski termed "banditism," went to Japan with the mission of persuading the Japanese to use the Poles for a diversion in the west. Dmowski, on the other hand, traveled there to dissuade the Japanese government from such a course of action. Micewski attaches great importance to Dmowski's sojourn in Japan. Dmowski became enchanted with the Japanese concept of nationalism which is reflected in his ideology of Polish nationalism.

Micewski deals at length with Dmowski's obsessions: his anti-Semi-

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tism, antimasonism, and antisocialism. Using the words of a Polish journalist (Wincenty Rzymowski), the author states that Dmowski created these Judeo-masonic forces in his imagination to attribute to them all his political failures. He prophesized a revolution in Europe against the Jews. Dmowski was so obsessed with the alleged power of the Jews and the Masons that he wrote a novel whose central idea was the conspiracy of these "powers." Discussing this novel, *Dziedzictwo* (*Heritage*), Micewski wonders that Dmowski allowed himself such a shallow method of expression to convey a political idea. The author accuses Dmowski of infusing the minds of at least a segment of Polish prewar society with his element of nationalism, and the notion that only a Catholic Pole was a good Pole. Micewski closes the long list of Dmowski's political faults by also indicating his antidemocratism, elitism, authoritarianism, and an inclination towards fascism.

The question of why Dmowski withdrew from political life in independent Poland certainly warrents special study. Micewski tackles the problem rather gently. He does not unequivocally accept the explanation that Dmowski returned to Poland too late (May 1920) to play a political role appropriate to his presumed importance. Micewski thinks that even if Dmowski and his National Democracy party wanted to govern Poland, they could not because they stood for conservatism while the country was in a democratic mood. Whatever the explanation, Dmowski never reached for power in Poland. He was in a better position than anyone else in that country to challenge Josef Pilsudski, but to the chagrin of his followers, he never did.

There are some noticeable shortcomings in Micewski's work. He says very little about Dmowski's conduct during the crucial days of the Polish-Bolshevik war. Just to criticize Pilsudski during a session of the Council for the Defense and leave for Poznan with foreign legations is not enough for a biography of such a "homo politicus" like Dmowski. Micewski hardly mentions the turmoil in Poland caused by the assassination of its first president, Gabriel Narutowicz, in 1922. Yet the accusers were pointing to Dmowski's political party as the indirect assassin. This event must have had a shocking effect on Dmowski whose aversion to violence in politics was well known. One would also appreciate an evaluation of Dmowski's performance as a foreign minister in the Witos cabinet. It is true that six weeks in office is not a long term to develop a pattern of action, but this was the only contact that Dmowski had with the reality of governing a country.

All in all, Micewski's book is an important contribution to Polish political historiography.

STANISLAW DABROWSKI
*Buffalo, New York*

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Stalin as a Revolutionary, 1879-1929 *by Robert C. Tucker. New York, W. W. Norton and Co., 1973—xx, 519 pp. $12.95.*

There are a score of biographies of Stalin, but this one depicts such a commanding and intriguing figure that Tucker's work is a welcome addition. Amply documented with full indication of sources, judicious and careful where there is temptation to sensationalize, it is the most detailed biography yet to appear. This substantial volume (somewhat mistitled—only a quarter deals with Stalin prior to the Revolution) is the first of a projected trilogy, which, if later volumes are of comparable size, will be more than twice as long as the largest previous biography.

Over such outstanding predecessors as Boris Souvarine, Louis Fischer, and Isaac Deutscher, Tucker has the advantage of a mass of new information released by de-Stalinization and the growth of Samizdat. He has profited particularly from the remarkable ability of Roy Medvedev to dig into Stalin's past, as shown in his *Let History Judge*. But the new information offered here does not significantly change our picture of Stalin; rather it confirms and enlarges what was previously known. More important is Tucker's effort to analyze and make understandable Stalin's enigmatic character. Tucker's previous work has dealt largely with Marxist and Soviet ideas; this interest is joined here with a venture into something close to psychoanalysis, assisted, he tells us in the preface, by several professional psychiatrists.

The task is difficult because Stalin systematically destroyed nearly everyone capable of shedding light on his early years. However, it is clear that Stalin's father brutally beat wife and son, while the mother doted on her only surviving child. These facts are seen as keys to Stalin's personality: a vengeful preoccupation with beating in both the physical and the metaphoric sense, and self-idealization based on his mother's favor. He was haughty from schoolboy years, always something of a loner, for whom Caucasian vendetta came naturally; and he identified with heroic fighters for the common folk against tyrants. Hence he took the pseudonym "Koba," a fictional hero of liberation struggles. He also put the Georgian strife into a Marxist framework of class struggle and identified with his true-life hero, Lenin. The name "Stalin" was chosen partly because it translated Djugashvili and suited a "hard" Bolshevik ("Djugas" meaning iron in Georgian), partly because it sounded like Lenin. The compulsion to see himself as "Lenin II" is brought in to explain much of Stalin's later politics; Stalin, in Tucker's interpretation, saw loyalty to himself as equivalent to loyalty to Lenin. Because of this identification and his poor success in Georgian politics, Stalin became super-Russified.

For Stalin's rise to supreme power, however, there is no clear answer,

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psychological or otherwise. He was no hero of the Revolution, yet after it he emerged as effectively number three man in the Soviet regime. He won no glory in the civil war, performing badly both at Tsaritsyn and in Poland; neither was he, in Tucker's estimation, particularly gifted as an administrator and organizer. Yet, somewhat mysteriously, "Whereas Trotsky emerged from the war with much glory and little power, Stalin emerged with little glory and much power" (p. 209). For Stalin's ability subsequently to eliminate all rivals, Tucker finds insufficient the traditional explanations of machine politics and intrigue; he gives a good deal of credit to Stalin's ability to systematize Lenin's thought for the new era.

Tucker is about as sympathetic to his subject as a modern scholarly biographer can easily be—the effort to understand strips Stalin of the demonic aura. He comes across as a good Leninist and a fairly good Marxist, intelligent and more idealistic in his own way than opportunistic, more self-deceived than cynical. He is more or less absolved from conscious desire for acclaim (p. 463), and his "revolution from above" is seen more as a matter of principle than as power-grabbing. Stalin was psychologically incapable of perceiving his own defects. It is suggested that his falsification of history was compulsive, dictated by his failure to measure up to self-expectations; for the sake of his self-image, Stalin had to see himself and require his subjects to see him as Lenin's comaker of the Revolution and winner of civil war battles. He was "a role player for whom the roles were real" (p. 436). Cruelty, vanity, and sadism are not considered as motives per se; instead, Stalin's inferiority complex badly required self-vindication, and he engaged in terrorism "so that Djugashvili could prove to himself that he was really Stalin" (p. 493).

Apart from raising serious questions of historical interpretation, this analysis is not absolutely convincing. Wife-beating fathers and fond mothers must have been commonplace in nineteenth-century Georgia, but Stalin was at odds with the large majority of his own countrymen. If identification with Lenin was so strong as to cause compulsions, it is not easy to understand the several occasions when Stalin is known to have been opposed to or critical of his master: he wrote slightingly of Lenin's polemic with Bodganov in 1911, opposed Lenin's hard line in March, 1917, disagreed with Lenin's insistence on the monopoly of foreign trade in 1922, and most seriously, went contrary to Lenin's wishes in punishing Georgian communists in Lenin's last days, at some risk to his own career. Stalin, in sum, remains enigmatic. Yet Tucker offers many interesting facts and suggestive theories; his effort to elu-

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cidate the murky figure of Stalin may well remain the best until some researcher is able to pore through the Kremlin archives.

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The Political Elite of Iran *by Marvin Zonis. Princeton University Press, 1971.—xvi, 389 pp. $12.50.*

Professor Marvin Zonis has provided a study that goes beyond the limits set by his title to give an excellent idea of the functioning of Iranian government and politics in recent years. Starting with a discussion of the highest of the elite, the Shah himself, Zonis notes the Shah's policies that have enabled him not only to keep but greatly strengthen his rule since his accession in 1941. The duration of his reign is in remarkable contrast to most of the short-lived rulers of Asia and Africa. Zonis discusses how the Shah has maintained and increased his control of the military forces through large military budgets, greatly augmented by United States aid and training, and through constantly rising military salaries and perquisites, wealth, and civil power for the high officers. Purges might also have been noted more. With somewhat greater difficulty and more setbacks, the Shah has also maintained control of the political elite. Zonis shows how rising oil revenues have been used not only to keep the military loyal, but also to expand the bureaucracy, including its top levels, so that rewards are constantly increased. Divide and rule, overlapping agencies that check each other, vertical directioning of important decisions all the way up to the Shah, and careful treatment of the opposition or those who are too powerful are all means the Shah has used to control the elite. Potential counterelites or those who become too powerful are dealt with by co-optation and proferred rewards and, when this does not work, by ambassadorships abroad (the popular minister of agriculture responsible for planning land reform, Hasan Arsanjani), exile (the ex-head of security forces, Gen. Taimur Bakhtiar and the leading oppositional *mujtahed*, Ayatollah Khomaini), or, as a last resort, jail. The efficient American- and Israeli-trained state security force, SAVAK, has helped keep the opposition immobilized, and in place of the demonstrations of 1960-61 and 1963, there has been relative quiet in recent years aside from student disturbances and minor plots.

The current elite are studied through questionnaires and interviews of 167 of the 307 elite ranked as the most powerful people in the country

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by a group of ten experts. Unfortunately, none of the military, an important component of the elite, could be interviewed. The interviews were carried on during the author's trip to Iran in 1963-65, and they reveal that this group, with few exceptions, came from highly elite social backgrounds. They are shown to be, in high proportions, insecure, cynical, mistrustful, and exploitative of others. These attitudes discourage serious efforts at energetic activity or reform initiated from below and are already discouraged by the control exercised over the elite by the Shah: "Beset by personal insecurities, mistrustful of themselves and their fellows, and cynical about the motives of all persons and the outcomes of all programs, the elite respond by coping with the system, not by attempting to alter it in fundamental ways. And the process of coping consists, basically, of learning to operate within its norms while maximizing the benefits than can be derived from it." The bureaucracy is inefficient in carrying out modernization programs and fears the democratization of political power or the broad-based involvement of the population in modernization.

Zonis's theses are cogent and are supported by numerous charts showing relationships among various responses to his questions. He has not limited himself to his interview material, but has done broad reading on Iran, political theory, and comparative politics, so that the material from his interviews is put into historical and comparative perspective. There are a few minor errors—the Senate, called before 1957, *hekmat*, does not mean religious law, and Taqizadeh was not famous for the defense of Tabriz in the constitutional revolution—but these do not detract from the solid worth of the book. It might have been useful to have more speculation on how much the elite may have changed since 1965, with the arrival of increased numbers of young technocrats and the continuation of economic growth. In part, Zonis has supported what many people already guessed about the Iranian elite, but even this part of his work is valuable for giving statistical evidence to what was formerly impressionistic. He deserves to be congratulated on a difficult job very well done.

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The United States, India, Pakistan and Bangladesh *by W. Norman Brown. Cambridge, Harvard University Press, 1972.—vii, 462 pp. Hardback, $16.00; Paperback, $4.50.*

Pakistan's Foreign Policy *by S. M. Burke. Fairlawn, N. J., Oxford University Press, 1973.—432 pp. $20.25.*

Norman Brown's volume on *The United States, India, Pakistan and Bangladesh* is a wide ranging introduction to the subcontinent for American readers. This third edition of his classic work, first published in 1953, brings the story up to 1972. It evokes the richness and complexity of the history, cultural evolution and politics of the three major countries on the subcontinent as does no other single volume. It is especially recommended as an introduction for serious students and the intelligent layman.

It is impossible to do justice to the accumulated experience and specialized knowledge that informed Professor Brown's selection of themes and choice of detail. Frequently, in one pithy sentence, he encapsulates the most complex situations, providing a summary introduction for a careful exposition. The index occupies 20 closely packed pages, suggesting the range of information available, with over 1600 separate items and references to more than 200 individuals.

The book is particularly useful in those fields closest to Professor Brown's specialties—cultural and religious history and South Asian philology. His chapters on the traditional heritage; the British legacy; the contrasting perspectives of Hindus and Muslims, Hindu-Muslim communalism and the Kashmir quarrel; and regional-linguistic politics are unusually penetrating. His analysis of Gandhi's thought and action is notable for its sensitivity, balance, and succinctness. Americans who have not read these chapters will have missed as penetrating and economical a discussion as is available.

An admirer of those subcontinental giants Gandhi and Nehru, whom he knew personally, and deeply knowledgeable as he is in classical Indic studies, he finds it easier to share the hopes and problems of India's leaders than to enter into the anxieties and insecurities that so afflicted Pakistan's leadership, though he is vivid on Pakistan's early desperate days.

For the serious student of South Asian economic development or politics, however, the work is useful mainly as a source of the historical and cultural context for further, more specialized studies. There is only limited attention to the major issues of economic policy or alternative development models.

In politics, the constitutional framework is carefully detailed and the party programs and relative electoral standing of the political parties are

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duly reported. But the inner dynamic of the major parties, the people and positions supplying indispensable linkages between party leadership and the voters, are not well-developed. This is true also of the sorts of "services" provided to followers by the successful party machines, the remarkable turnover in Congress' electoral representations, the unusual skill at party building and fundraising of the Congress party managers (and the impediments to reform these implied), the contrast between the apparently modern programmatic politics at the Center and the more obviously traditional sociocultural, caste-based politics of the states and districts—these are implied but not well-developed. Regional and linguistic political issues are skillfully sketched. However, apart from anti-Brahman politics in South India and in Maharastra and the political ambivalence of the untouchables, caste politics in the form of the restless *jhati's* invidious self-comparison, as each group seeks to improve its relative standing in relation to those *jhati's* nearest to it in the status system, do not appear. The enormously weighty role of the bureaucracy in defining issues, designing, carrying out or delaying policy decisions and setting limits to what can be done is only obliquely suggested. There is a tendency to accept Indian editorial opinion on national likes and dislikes as an adequate interpretation of Indian foreign policy. A more analytical approach to the way India's and Pakistan's elite perceived their contrasting security problems and assessed their military capabilities would have provided a more solid base for foreign policy analysis.

These limitations notwithstanding, a serious student of the subcontinent would do well to gain command of Professor Brown's most authoritative chapters first. The rest of the book provides an up-to-date survey which can serve as a beginning framework for more detailed and conceptually sophisticated study in other aspects of subcontinental affairs.

S. M. Burke's *Pakistan's Foreign Policy* is a highly competent, analytically careful and well-documented historical analysis of its subject. The author admits in the foreword that his "outlook is necessarily Pakistani" but he continues, "I submit to the reader that the rationale for Pakistan's foreign policy deserves to be better known than it is, and that anyone wishing to study Pakistani foreign policy must begin by trying to understand what the world looked like to Pakistanis themselves and why, at crucial moments, those at the helm . . . chose certain courses in preference to others which were also open." This analysis the study does admirably.

No one can pretend to understand the international relations of the subcontinent without carefully considering the argument and material in this book. It is doubly welcome since there have been so few scholarly

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books on Pakistan in general. Even fewer have marshaled the evidence in such a calm and disciplined way regarding Pakistan's foreign policy. Burke's study appears to depend mainly upon published sources, though he seems to have personal access to "insiders"; he has organized his materials with care, presenting Pakistani perceptions and choices with discrimination, in a lucid, economical style.

Of particular interest to this reviewer was Burke's reconstruction of the gradual loss of confidence in United States backing after President Eisenhower's visit to India, and the subsequent efforts of the Ayub regime to open additional options beyond the alliance with the United States through his concept of the "triangular tightrope." Pakistan's sense of being weak vis-à-vis the much larger India, ignored and consistently frustrated on Kashmir, comes through with clarity. It is a pity there was not more intensive effort to assess the domestic political pressures which contributed to making the Kashmir issue of such overriding significance.

In time, perhaps, a major official in the Pakistan foreign affairs field will give us a detailed memoir, reporting how the play of domestic politics, of bureaucratic contention, and of personalities influenced the security policies chosen and the way they were implemented, along the lines of Graham Allison's *The Cuban Missile Crisis* or Richard Neustadt's *Alliance Politics*. Until that time, Burke's study will surely stand as one of the most disciplined presentations of the Pakistan government's efforts to cope with acute security fears and act on what proved to be exaggerated foreign policy expectations.

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